

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 317

CHARLES HAMMER, PETITIONER,

THE UNITED STATES OF AMERICA

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR HABEAS CORPUS FILED MARCH 15, 1935

HABEAS CORPUS GRANTED APRIL 11, 1935

(30,958)

15-42
35-1

(30,958)

SUPREME COURT OF THE UNITED STATES

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CHARLES HAMMER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1] **IN UNITED STATES DISTRICT COURT****INDICTMENT**

Southern District of New York, ss: The grand jurors of the United States of America duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for that district upon their oath present:

That on the 18th day of April, 1923, a petition was filed in the United States District Court for the Southern District of New York, praying that one, Annie Hammer, be adjudicated a bankrupt under and in accordance with the Acts of Congress of July 1, 1898, and the amendments thereto commonly known as the Bankruptcy Act; that on April 28, 1923, said Annie Hammer was duly adjudicated a bankrupt by said United States District Court and the said matter and proceeding was duly referred to Stephen H. Thayer, one of the referees in bankruptcy of the said United States District Court, who was duly appointed and qualified to act as such and who is hereinafter referred to as "said referee" to take all such further proceedings therein as required by the said acts of Congress;

That heretofore on the 2nd day of July, 1923, and continuously thereafter down to and including the 25th day of October, 1923, at the Southern District of New York and within the jurisdiction of this court, and while the said proceeding in bankruptcy of Annie [fol. 2] Hammer was duly and regularly pending before the said referee, as aforesaid, Charles Hammer, the defendant herein, unlawfully did knowingly, wilfully and corruptly suborn, instigate, induce and procure one Annie Hammer to duly take an oath before the said referee Stephen H. Thayer in the said proceeding in bankruptcy then and there pending before the said referee, that she, the said Annie Hammer, would testify, declare, depose and certify truly to material matters relative to the said proceeding in bankruptcy, concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and to wilfully and contrary to such oath, state material matter hereinafter more particularly set forth, which neither the defendant herein nor the said Annie Hammer then or at any other time, believed to be true.

That on the 2nd day of July, 1923, at the Southern District of New York and within the jurisdiction of this Court, the said Annie Hammer at the instigation and procurement of the defendant herein did appear and present herself as she had been duly required before the said referee as a witness to give evidence concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and the said Annie Hammer, was then and there duly sworn and took her oath as such witness before the said referee that the evidence which she, the said Annie Hammer, should give in the said matter and proceedings in bankruptcy should be the truth, the whole truth and nothing but the truth;

That the said referee then and there duly administered to the said [fol. 3] Annie Hammer the said oath; that the said referee then and

there had the authority and was a competent person to administer the said oath, and did administer the said oath to the said Annie Hammer as aforesaid; that the said matter and proceeding aforesaid and the hearing thereon before the said referee was a case in which a law of the United States authorized on oath to be administered and said oath was authorized and administered under and by virtue of a law of the United States of America.

And the said Annie Hammer so being duly sworn as aforesaid it did then and there upon the hearing in said proceeding aforesaid become and at all the times herein mentioned was a material matter and inquiry in the said matter and proceeding in bankruptcy aforesaid:

(a) Whether one Herman Warton had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer, the sum of \$400 or any other sum.

(b) Whether the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or any other sum, theretofore and prior to the 18th day of April, 1923.

(c) Whether the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton a promissory note for the sum of \$400 dated December 1, 1922.

(d) Whether one Louis Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer, the sum of \$500 or any other sum.

[fol. 4] (e) Whether the said Annie Hammer had borrowed from the said Louis Trinz the sum of \$500, or any other sum theretofore and prior to the 18th day of April, 1923.

(f) Whether the said Annie Hammer had theretofore and prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis Trinz her promissory note for the sum of \$500, dated October 14, 1922;

That thereupon the said Annie Hammer in consequence and by means of said wilful and corrupt subornation, instigation, inducement and procurement of the defendant herein, having been duly sworn, and having taken her oath aforesaid, on the 2nd day of July, 1923, within the district aforesaid and within the jurisdiction of this court, upon the hearing in the said matter and proceeding in bankruptcy aforesaid did falsely, corruptly, knowingly, wilfully, fraudulently and contrary to said oath, swear, depose, testify and state before the said referee upon the hearing in the said matter and proceeding in bankruptcy aforesaid, among other things in substance and to the following effect, that is to say:

(a) That the said Herman Warton had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$400 or some other sum.

(b) That the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or some other sum theretofore and prior to the 18th day of April, 1923.

[fol. 5] (c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton her promissory note for the sum of \$400 dated December 1, 1922.

(d) That the said Louis H. Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500 or some other sum.

(e) That the said Annie Hammer had theretofore and prior to the 18th day of April, 1923, borrowed from the said Louis H. Trinz the sum of \$500 or some other sum.

(f) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis H. Trinz, her promissory note for the sum of \$500, dated October 14, 1922.

Whereas, in truth and in fact, it was not true at the time of so swearing, deposing, testifying and stating, said Annie Hammer and the defendant herein did not believe it to be true and each of them well knew that it was not true:

(a) That the said Herman Warton did theretofore and prior to the 18th day of April, 1923, loan to the said Annie Hammer the sum of \$400 or any other sum.

(b) That the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or any other sum theretofore and prior to the 17th day of April, 1923.

[fol. 6] (c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton a promissory note for the sum of \$400 dated December 1, 1922.

(d) That the said Louis H. Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500 or any other sum.

(e) That the said Annie Hammer had borrowed from the said Louis H. Trinz the sum of \$500 or any other sum theretofore and prior to the 18th day of April, 1923.

(f) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis H. Trinz her promissory note for the sum of \$500 dated October 14, 1922.

Whereas, in truth and in fact the said Annie Hammer and the defendant herein and each of them did not believe to be true the

said matters by the said Annie Hammer sworn, testified and stated as hereinbefore specified:

Whereas, in truth and in fact the said Charles Hammer the defendant herein, at the time when he so suborned, instigated, induced and procured the said Annie Hammer to take such oath and to depose, swear, testify and state such material matters wilfully and contrary to her oath aforesaid then and there well knew that the said Annie Hammer did not then and there or at any time believe to be true:

[fol. 7] (a) That the said Herman Warton did theretofore and prior to the 18th day of April, 1923, loan to the said Annie Hammer the sum of \$400 or any other sum.

(b) That the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or any other sum theretofore and prior to the 17th day of April, 1923.

(c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton a promissory note for the sum of \$400 dated December 1, 1922.

(d) That the said Louis H. Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500 or any other sum.

(e) That the said Annie Hammer had borrowed from the said Louis H. Trinz the sum of \$500 or any other sum theretofore and prior to the 18th day of April, 1923.

(f) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis H. Trinz her promissory note for the sum of \$500, dated October 11, 1922.

And the said Charles Hammer did not then or at any time believe to be true the said material matters which he so suborned, instigated, induced and procured the said Annie Hammer to depose, swear, testify and state knowingly, wilfully, and fraudulently and contrary to her said oath as heretofore specified:

[fol. 8] And so the grand jurors aforesaid on their oath aforesaid do say that the said Charles Hammer in the manner and form aforesaid wilfully and corruptly did suborn, instigate, procure and induce the said Annie Hammer to commit wilful and corrupt perjury.

Second Count

And the grand jurors aforesaid on their oath aforesaid, do further present, that on the 18th day of April, 1923, a petition was filed in the United States District Court for the Southern District of New York, praying that one Annie Hammer be adjudicated a bankrupt under and in accordance with the Acts of Congress of July 1, 1898, and the amendments thereto commonly known as the Bankruptcy

Act; that on April 28, 1923, said Annie Hammer was duly adjudicated a bankrupt by said United States District Court and the said matter and proceeding was duly referred to Stephen H. Thayer, one of the referees in bankruptcy of the said United States District Court, who was duly appointed and qualified to act as such and who is hereinafter referred to as "said referee" to take all such further proceedings therein as required by the said acts of Congress.

That heretofore on the 2nd day of July, 1923, and continuously thereafter down to and including the 25th day of October, 1923, at the Southern District of New York and within the jurisdiction of this court, and while the said proceeding in bankruptcy of Annie Hammer was duly and regularly pending before the said referee, as aforesaid, Charles Hammer, the defendant herein, unlawfully did knowingly, wilfully and corruptly suborn, instigate, induce and [fol. 9] procure one Louis H. Trinz to duly take an oath before the said referee, Stephen H. Thayer, in the said proceeding in bankruptcy then and there pending before the said referee, that he, the said Louis H. Trinz would testify, declare, depose and certify truly to material matters relative to the said proceeding in bankruptcy, concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and to wilfully and contrary to such oath, state material matter, hereinafter more particularly set forth, which neither the defendant herein nor the said Louis H. Trinz then or at any other time believed to be true.

That on the 25th day of October, 1923, at the Southern District of New York and within the jurisdiction of this Court, the said Louis H. Trinz at the instigation and procurement of the defendant herein did appear and present himself as he had been duly required before the said referee as a witness to give evidence concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and he, the said Louis H. Trinz was then and there duly sworn and took his oath as such witness before the said referee, that the evidence which he, the said Louis H. Trinz should give in the said matter and proceeding, should be the truth, the whole truth and nothing but the truth;

That the said referee then and there duly administered to the said Louis H. Trinz the said oath; that the said referee then and there had the authority and was a competent person to administer the said oath and did administer the said oath to the said Louis H. [fol. 10] Trinz as aforesaid; that the said matter and proceeding aforesaid and the hearing thereon before the said referee was a case in which a law of the United States authorized an oath to be administered and said oath was authorized and administered under and by virtue of a law of the United States of America;

And the said Louis H. Trinz so being duly sworn as aforesaid it did then and there upon the hearing in said proceeding aforesaid become and at all the times herein mentioned was a material matter and inquiry in the said matter and proceeding in bankruptcy aforesaid:

(d) Whether one Louis Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500. or any other sum.

(e) Whether the said Annie Hammer had borrowed from the said Louis Trinz the sum of \$500. or any other sum, theretofore and prior to the 18th day of April, 1923.

(f) Whether the said Annie Hammer had theretofore and prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis Trinz her promissory note for the sum of \$500. dated October 14, 1922;

That thereupon the said Louis H. Trinz in consequence of and by means of said wilful and corrupt subornation, instigation, inducement and procurement of the defendant herein, having been duly sworn and having taken his oath aforesaid, on the 25th day of October, 1923, within the district aforesaid and within the jurisdiction of this court, upon the hearing in the said matter and proceeding in bankruptcy aforesaid, did falsely, corruptly, knowingly, wilfully, fraudulently and contrary to said oath, swear, depose, testify and state before the said referee upon the hearing in the said matter and proceeding in bankruptcy aforesaid, among other things in substance and to the following effect, that is to say:

(d) That the said Louis H. Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500. or some other sum.

(e) That the said Annie Hammer had theretofore and prior to the 18th day of April, 1923, borrowed from the said Louis H. Trinz the sum of \$500. or some other sum.

(f) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Louis H. Trinz, her promissory note for the sum of \$500. dated October 14, 1922.

Whereas in truth and in fact, it was not true at the time of so swearing, deposing, testifying and stating, and the said Louis H. Trinz and the defendant herein did not believe it to be true and each of them well knew that it was not true:

(d) That the said Louis H. Trinz had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500. or any other sum.

(e) That the said Annie Hammer had borrowed from the said Louis H. Trinz the sum of \$500. or any other sum theretofore and [fol. 12] prior to the 18th day of April, 1923.

(f) That the said Annie Hammer had prior to the 18th of April, 1923, signed, executed and delivered to the said Louis H. Trinz her promissory note for the sum of \$500. dated October 14, 1922;

Whereas in truth and in fact the said Louis H. Trinz and the defendant herein and each of them did not believe to be true, the said matters by the said Louis H. Trinz sworn, testified, and stated as hereinbefore specified, and

Whereas in truth and in fact the said Charles Hammer, the defendant herein, at the time when he so suborned, instigated, induced and procured the said Louis H. Trinz to take such oath and to depose, swear, testify and state such material matters wilfully and contrary to his oath aforesaid, then and there well knew that the said Louis H. Trinz did not then and there or at any time believe to be true;

(d) That the said Louis H. Trinz had theretofore, and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$500. or any other sum.

(e) That the said Annie Hammer had borrowed from the said Louis H. Trinz the sum of \$500. or any other sum theretofore and prior to the 18th day of April, 1923.

(f) That the said Annie Hammer had prior to the 18th day of [fol. 13] April, 1923, signed, executed and delivered to the said Louis H. Trinz her promissory note for the sum of \$500. dated October 14, 1922;

And the said Charles Hammer did not then or at any time believe to be true the said material matters which he so suborned, instigated, induced and procured the said Louis H. Trinz to depose, swear, testify and state wilfully and contrary to his said oath as heretofore specified:

And so the grand jurors aforesaid on their oath aforesaid do say that the said Charles Hammer in the manner and form aforesaid wilfully and corruptly did suborn, instigate, procure and induce the said Louis H. Trinz to commit wilful and corrupt perjury.

Third Count

And the grand jurors aforesaid on their oath aforesaid, do further present, that on the 18th day of April, 1923, a petition was filed in the United States District Court for the Southern District of New York, praying that one Annie Hammer be adjudicated a bankrupt under and in accordance with the Acts of Congress of July 1, 1898, and the amendments thereto commonly known as the Bankruptcy Act; that on April 28, 1923, said Annie Hammer was duly adjudicated a bankrupt by said United States District Court and the said matter and proceeding was duly referred to Stephen H. Thayer, one of the referees in bankruptcy of the said United States District Court, who was duly appointed and qualified to act as such and who [fol. 14] is hereinafter referred to as "said referee" to take all such further proceedings therein as required by the said Acts of Congress.

That heretofore on the 2nd day of July, 1923, and continuously thereafter down to and including the 25th day of October, 1923, at the Southern District of New York and within the jurisdiction of this court, and while the said proceeding in bankruptcy of Annie Hammer was duly and regularly pending before the said referee, as aforesaid, Charles Hammer, the defendant herein, unlawfully did knowingly, wilfully and corruptly suborn, instigate, induce and procure one Herman Warton to duly take an oath before the said referee Stephen H. Thayer in the said proceeding in bankruptcy then and there pending before the said referee, that he, the said Herman Warton would testify, declare, depose and certify truly to material matters relative to the said proceeding in bankruptcy concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and to wilfully and contrary to such oath, state material matter, hereinafter more particularly set forth, which neither the defendant herein nor the said Herman Warton then or at any other time believed to be true.

That on the 25th day of October, 1923, at the Southern District of New York and within the jurisdiction of this court, the said Herman Warton at the instigation and procurement of the defendant herein did appear and present himself as he had been duly required before the said referee as a witness to give evidence concerning the goods, conduct, property and debts of the said Annie Hammer, the bankrupt, and the said Herman Warton, was then and there duly sworn and took his oath as such witness before the said referee [fol. 15] that the evidence which he, the said Herman Warton, should give in the said matter and proceeding in bankruptcy should be the truth, the whole truth and nothing but the truth.

That the said referee then and there duly administered to the said Herman Warton the said oath; that the said referee then and there had the authority and was a competent person to administer the said oath and did administer the said oath to the said Herman Warton as aforesaid; that the said matter and proceeding aforesaid and the hearing thereon before the said referee was a case in which a law of the United States authorized an oath to be administered and said oath was authorized and administered under and by virtue of a law of the United States of America.

And the said Herman Warton so being duly sworn as aforesaid it did then and there upon the hearing in said proceeding aforesaid become and at all the times herein mentioned was a material matter and inquiry in the said matter and proceeding in bankruptcy aforesaid:

(a) Whether one Herman Warton had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer, the sum of \$400 or any other sum.

(b) Whether the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or any other sum, theretofore and prior to the 18th day of April, 1923.

(c) Whether the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed, and delivered to the said Herman Warton a promissory note for the sum of \$400 dated December 1, 1922.

[fol. 16] That thereupon the said Herman Warton in consequence of and by means of said wilful and corrupt subornation, instigation, inducement and procurement of the defendant herein, having been duly sworn, and having taken his oath aforesaid on the 25th day of October, 1923, within the district aforesaid and within the jurisdiction of this court, upon the hearing in the said matter and proceeding in bankruptcy aforesaid, did falsely, corruptly, knowingly, wilfully, fraudulently and contrary to said oath, swear, depose, testify and state before the said referee upon the hearing in the said matter and proceeding in bankruptcy aforesaid, among other things in substance and to the following effect, that is to say:

(a) That the said Herman Warton had theretofore and prior to the 18th day of April, 1923, loaned to the said Annie Hammer the sum of \$400 or some other sum.

(b) That the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or some other sum theretofore and prior to the 18th day of April, 1923.

(c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton her promissory note for the sum of \$400 dated December 1, 1922.

Whereas, in truth and in fact, it was not true at the time of so swearing, deposing, testifying and stating, and the said Herman Warton and the defendant herein did not believe it to be true and each of them well knew that it was not true:

[fol. 17] (a) That the said Herman Warton did theretofore and prior to the 18th day of April, 1923, loan to the said Annie Hammer the sum of \$400 or any other sum.

(b) That the said Annie Hammer had borrowed from the said Herman Warton the sum of \$400 or any other sum theretofore and prior to the 17th day of April, 1923.

(c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton a promissory note for the sum of \$400, dated December 1, 1922.

Whereas, in truth and in fact the said Herman Warton and the defendant herein and each of them did not believe to be true the said matters by the said Herman Warton sworn, testified and stated as hereinbefore specified, and

Whereas, in truth and in fact the said Charles Hammer, the defendant herein, at the time when he so suborned, instigated, induced and procured the said Herman Warton to take such oath and to depose, swear, testify and state such material matters wilfully and contrary to his oath aforesaid, then and there well knew that the said Herman Warton did not then and there or at any time believe to be true:

(a) That the said Herman Warton did theretofore and prior to the 18th day of April, 1923, loan to the said Annie Hammer the sum of \$400 or any other sum.

(b) That the said Annie Hammer had borrowed from the said [fol. 18] Herman Warton the sum of \$400 or any other sum theretofore and prior to the 17th day of April, 1923.

(c) That the said Annie Hammer had prior to the 18th day of April, 1923, signed, executed and delivered to the said Herman Warton a promissory note for the sum of \$400 dated December 1, 1922.

And the said Charles Hammer did not then or at any time believe to be true the said material matters which he so suborned, instigated, induced and procured the said Herman Warton to depose, swear, testify and state wilfully and contrary to his said oath as heretofore specified;

And so the grand jurors aforesaid on their oath aforesaid do say that the said Charles Hammer in the manner and form aforesaid wilfully and corruptly did suborn, instigate, procure and induce the said Herman Warton to commit wilful and corrupt perjury.

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 126 U. S. C. C.) and Acts of Congress of July 1, 1898 (Sec. 29b) (1).

Wm. Hayward, United States Attorney.

[fol. 19] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

CHARLES HAMMER, Defendant

Bill of Exceptions

This cause came on for trial before Hon. Edwin L. Garvin, United States District Judge, and a jury, on the 28th day of March, 1924.

APPEARANCES OF COUNSEL

William Hayward, Esq., United States Attorney, for the Government;

Jac M. Wolff, Esq., Assistant U. S. Attorney, of Counsel;

Jacob Stutsky, Esq., Attorney for the Defendant; Robert H. Elder, Esq., of Counsel.

(A jury was duly impaneled and sworn.)

(Whereupon an adjournment was taken to March 29, 1924, at 10:30 a. m.)

[fol. 20]

New York, March 29, 1924.

Met pursuant to adjournment.

Same appearances as before.

ARGUMENT OF COUNSEL

(Mr. Wolff opened the case to the jury on behalf of the government.)

Mr. Wolff: Before the witness is called, Mr. Elder agreed with me that he would allow the testimony produced by the Referee in lieu of the stenographer's minutes of the testimony. Is that correct, Mr. Elder?

Mr. Elder: I told Mr. Wolff that it would not be necessary for him to call the stenographer or make technical proof of the accuracy of the minutes.

Mr. Wolff: Will you consent that the testimony produced this morning by the Referee and marked Referee's copy in the matter of Annie Hammer, Bankrupt, shall be accepted as a true transcript of the testimony given by the witnesses Annie Hammer, Herman Warton and Louis H. Trinz?

Mr. Elder: Yes, subject of course to correction and errors which may be noticed as we go along.

Mr. Wolff: That could be done if the stenographers were here.

Mr. Elder: Yes, surely. I think that was only a part of the agreement that we finally entered into. I think that I was permitted to use copies too.

Mr. Wolff: Yes, when I read that testimony. I think if it please your Honor I will ask to have this marked Government's Exhibit 1 for identification.

(Marked Government's Exhibit 1 for identification.)

[fol. 21] Mr. Wolff: I think, your Honor, that this stipulation is unqualified; I am not restricted any more than if the stenographer were here. If they object again I will ask to have the stenographer here.

Mr. Elder: There was no qualification about that. That is not right, Mr. Wolff, to put that in evidence as relevant and material evidence in the case.

Mr. Wolff: I am just offering it for identification so when I am reading from it it can be identified.

Mr. Elder: That is what I understood.

The Court: Is that the understanding?

Mr. Wolff: Yes.

The Court: So ordered.

Mr. Wolff: I offer in evidence the original adjudication in bankruptcy and order of reference of Annie Hammer, Bankrupt.

(Marked Government's Exhibit No. 2.)

Mr. Wolff: I offer in evidence involuntary petition in bankruptcy filed with this court on April 18, 1923, at 3:40 p. m.

(Marked Government's Exhibit No. 3.)

Mr. Wolff: Now, if your Honor please, I offer in evidence schedules in bankruptcy in the bankruptcy petition of Annie Hammer filed in this court on June 9th, 1923.

(Marked Government's Exhibit No. 4.)

[fol. 22] STEPHEN H. THAYER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Wolf:

Q. Are you, sir, a Referee in Bankruptcy for the Southern District of New York?

A. I am.

Mr. Elder: Now, if your Honor please, for the purpose of raising the question of jurisdiction, I must object upon the ground that this is not the best or proper evidence.

The Court: You mean as to the statement that Judge Thayer is a Referee in Bankruptcy?

Mr. Elder: Yes, sir.

The Court: Objection overruled.

Mr. Elder: I except; and in order to get the record right I move that the answer be stricken out upon the ground that it is not the best evidence and is incompetent.

The Court: Motion denied.

Mr. Elder: Exception.

Q. Were you such Referee in the month of April, 1923, and November, 1923?

Mr. Elder: I object to this, your Honor, as being not the best proof, and incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I was.

Q. And during all the time that elapsed between those months, is that correct?

A. Yes, sir.

[fol. 23] Q. During each and very one of those months?

A. Yes.

Q. Where is your official office located?

A. At 18 South Broadway, Yonkers.

Q. I show you this Government's Exhibit No. 2, consisting of an adjudication in bankruptcy and order of reference, and ask you if this matter was referred to you (handing witness paper)?

A. It was.

Q. And you are the Referee mentioned in that order?

A. I am the Referee named in that order.

Q. Thereupon in pursuance of that order of reference did you hold any hearings?

A. I did.

Q. I now show you Government's Exhibit 1 for identification, consisting of the stenographer's minutes and testimony of Annie Hammer, Charles Hammer, Louis H. Trinz and Herman Warton, on July 2, October 4, October 25 and October 25, respectively, and ask you if you produced those in court this morning?

A. I did.

Q. Now, I ask you, Mr. Referee, to state to the court and jury whether you have reviewed that testimony?

A. I have read it not long ago.

Q. Do you recall the proceeding of Annie Hammer in bankruptcy before your Honor?

A. I do.

Q. Do you recall, without referring to that testimony whether or not on July 2nd, 1923, Annie Hammer appeared before you in pursuance of your direction?

A. I could not remember the date independently of the record.

Q. Mr. Referee, have you any of your official records with you?

A. Yes.

Q. Other than those minutes?

A. Yes.

Q. Mr. Referee, do you recall at all that Annie Hammer appeared before you as a witness in this proceeding?

A. I do.

[fol. 24] Q. And do you recall without referring to any records the exact day or dates upon which she appeared before you?

A. No.

Q. Is there anything from which you can refresh your recollection?

A. Yes, sir.

Q. So as to aid your memory in recalling or to recall when she came before you?

A. Yes.

Q. Have you such documents or papers with you?

A. Yes, sir.

Q. Will you kindly refer to them and answer the question as to when Annie Hammer appeared as a witness before you in the bankruptcy proceeding known as the matter of Annie Hammer, Bankrupt?

A. On the 2nd day of July, 1923.

Q. Now, by means of the same aid will you kindly tell the court and jury on what day or days Louis H. Trinz appeared as a witness in your court in the same matter?

A. On the 25th day of October, 1923.

Q. And can you also tell us on what day Herman Warton appeared as a witness before you in the same matter?

A. On the same day, the 25th of October.

Q. Now, Mr. Referee, when Annie Hammer was called as a witness in that proceeding on July 2nd, 1923, did you administer to Annie Hammer an oath?

Mr. Elder: I object to this.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I did.

Mr. Wolff: If your Honor please, I wish Mr. Elder would adopt [fol. 25] the same rule as he asked me to adopt, not to make remarks or objections that seem obviously unnecessary. Mr. Elder knows this is a subornation of perjury proceeding and that the oath is the most importing thing in it.

The Court: I think we are all agreed that counsel on either side has a right to interpose objection to any question asked the witness.

Mr. Wolff: Mr. Elder knows it is relevant and makes objection when it is relevant.

Mr. Elder: Must I be subject to a lecture and spoken of in this disrespectful way?

The Court: If Mr. Elder states he regards any question as one to which he is bound to interpose an objection I am sure that neither of us has anything to say to that, Mr. Wolff?

Mr. Wolff: Apparently—I won't say any more, your Honor.

The Court: Will you read the question to Judge Thayer please?

(Question read.)

The Witness: I did.

Q. Will you state in substance the oath that you administered to her?

A. The substance of the oath was that the testimony she would give in that proceeding would be the truth, the whole truth and nothing but the truth, "So help you God."

Mr. Wolff: Have the jurors all heard that? I think you have heard it several times.

Q. On October 25, 1923, when Mr. Louis H. Trinz appeared as a [fol. 26] witness in that matter of Annie Hammer, bankrupt, before you, Mr. Referee, did you administer an oath to Mr. Louis H. Trinz?

Mr. Elder: If your Honor please, I object on the ground it is incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I did.

Q. That was on October 25, 1923, is that correct?

A. Yes, sir.

Q. Will you state in substance the oath you administered to Louis H. Trinz?

A. That he should tell the truth, the whole truth and nothing but the truth in the testimony he should give in this proceeding.

Q. On October 25th, did Herman Warton appear as a witness in that proceeding, and did you administer an oath to him?

Mr. Elder: I object to this, your Honor, on the same ground, as incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I did.

Q. Mr. Referee, will you state the substance of it?

A. The substance of it was, You swear that the testimony you shall give in this matter will be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Elder: If your Honor please, I object to the insulting conduct of Mr. Wolff in the presence of the jury.

[fol. 27] The Court: Without concurring in the characterization the objection to Mr. Wolff turning to you and bowing is sustained. Mr. Wolff, we may as well understand that this case will be tried in accordance with the direction of the court. Now, will you please confine yourself to putting your questions and raising your objections?

Mr. Wolff: Yes, sir, I will do that.

Q. Now, Mr. Referee, in pursuance of this appearance of Annie Hammer on July 2nd, 1923, did she testify?

Mr. Elder: I object to that question as incompetent.

Q. Did she give testimony in your office in these proceedings?

A. She did.

Q. On that day, namely, October 25, 1923, on which Mr. Louis H. Trinz appeared before you as a witness in the bankruptcy proceeding of Annie Hammer, bankrupt, and on the same day when the oath related to the jurors by you was administered to Louis Trinz, did he give testimony in this proceeding?

A. He did.

The Court: Before or after you administered the oath?

The Witness: After.

Q. On October 25, 1923, the day on which you testified you administered the oath of truthfulness to Herman Warton, and in pur-

suance of his appearance on that day before you as Referee in Bankruptcy in the proceeding of Annie Hammer, Bankrupt, did Herman [fol. 28] Warton give testimony?

A. He did.

Q. In each case, in the case of Annie Hammer, Louis H. Trinz and Herman Warton, was the testimony given after the oath was administered?

A. It was.

Cross-examination by Mr. Elder:

Q. Judge, you do not remember this case, do you?

A. Not independently of the record.

Q. And you do not remember the dates with the record either, do you?

A. I think I should say yes to that.

Q. Is that the best statement you can make?

A. Yes.

Q. As a matter of fact you say July 2nd and October 25th and October 4th just because you have seen it on some minutes, don't you?

A. I do not quite catch the question.

Q. I say as a matter of fact you say July 2nd and October 4th and October 25th just because you see it on some record, isn't that so?

A. No, that is not true.

Q. And because you think the record is right?

A. Partly that, yes.

Q. What?

A. That is partly so.

Q. Well, did your inspection of these entries respecting the dates refresh your recollection so that you can remember this?

A. Yes.

Q. It did?

A. Yes.

Mr. Elder: That is all.

Mr. Wolff: I will read pages 63 to 74; this is the testimony of Trinz.

[fol. 29] Mr. Elder: If your Honor please, at the present time, the charge here being subornation of perjury, I think the proper foundation has not been laid for this testimony. I can conceive that it might become admissible. Therefore, at this time I must object to it upon the ground it is incompetent, not because the stenographer is not here or because it has not been proven technically in that sense, not at all. The stipulation on the record is kept, but simply because there is no proper foundation at this time which has been laid for the introduction of the evidence.

The Court: Objection overruled, with leave to renew, and with leave to strike it from the record.

Whereupon the court read, in the absence of the jury, so much of the testimony of Louis H. Trinz, Herman Warton and Annie Hammer contained in Exhibit 1 for identification, as was received in

evidence. During the course of the reading of the testimony of Hermann Warton this occurred:

"You gave her all you had on the first occasion and that was \$200?"

"A. Yes.

"Q. And the next time you save in between?"

"A. Part of that money, yes.

"Q. Did you not have any other money?"

Mr. Elder: I object to that.

The Court: Overruled.

Mr. Elder: Exception.

The Court (reading):

[fol. 30] "A. Possibly another debt would be paid to me and that is how it accumulated and I could not save \$200 out of my salary.

"Q. Do you know where you got the last \$200?"

"A. I don't remember how it came to me."

"Q. How did you happen to go—how did you happen to put this lady in bankruptcy?"

"A. I asked her for the money and she gave me a note and when the note came due I asked her again, and she said she didn't have it to give to me."

"Mr. Elder: I object to that, that has nothing to do with it.

"The Court: The court allows it for the reason that it is relevant to the charge that there was false testimony that Mrs. Hammer gave him a note."

(At 3:05 p. m., the jury returned and by the direction of the court the stenographer reads to the jury the excerpts of testimony which have been admitted in evidence by the Judge, as follows:)

"TESTIMONY OF ANNIE HAMMER

"Q. Do you know a man by the name of Herman Warton?"

"A. Yes.

"Q. Warton?"

"A. Warton? Yes.

"Q. Ever have any business dealing with him?"

"A. Just a friend. I borrowed from, too, money.

"Q. When?"

"A. Before I went away.

"Q. Before you went away?"

"A. Yes.

"Q. And went away in July?"

"A. Yes.

"Q. And how much?"

"A. Few hundred dollars.

"Q. Do you know how much?"

"A. No.

"Q. Your schedules say on December 23, 1922, you borrowed \$400 from him?

"A. Yes.

[fol. 31] "Q. That's a mistake?

"A. Yes.

"Q. You swore to the schedules?

"A. That's a mistake. I didn't look over the schedules.

"Q. Are you sure you borrowed this money before you left?

"A. I am not sure because I told you before I borrowed from the same boys and when I came back I owed money to different people.

"Q. Do you know a man by the name of Louis H. Trinz?

"A. Yes.

"Q. Did you borrow money from him?

"A. From him too. When I came back I tried to get money from him too.

"Q. When you came back?

"A. I told you before I don't know which: I was mixed up and wanted to pay the girl and Dr. Greenberg's money. I was trying to get money from everybody. I thought I would pay them.

"Q. And now are not going to pay them anything?

"A. I couldn't pay that as I didn't have it.

"Q. How much did you borrow from this man Trinz?

"A. Few hundred dollars.

"Q. Don't remember that, do you?

"A. No.

"Q. Is there anything the matter with your memory?

"A. I told you before I borrowed from a lot of people to straighten it out and to have the two people, paid up.

"Q. If your memory is so poor how do you expect to pay back these people?

"A. I thought Mr. Hammer would give it to me.

"Q. You didn't know how much you owed any of these men whose names I mentioned. You don't know how much you owed Mr. Trinz?

"A. Not exactly.

[fol. 32]

"TESTIMONY OF LOUIS H. TRINZ

"Q. Are you acquainted with Annie Hammer, the bankrupt?

"A. Yes, sir.

"Q. Are you any relative of hers?

"A. No, sir.

"Q. How long have you known her?

"A. I should say about three years or so, possibly longer.

"Q. Did you ever have any kind of transaction with her?

"A. Outside of money I lent her.

"Q. You did lend her some money?

"A. Yes, sir.

"Q. About what time?

"A. Last year about this time I should say.

"Q. When did she first ask you for this money?

"A. I can't recall exactly.

"Q. How long after this interview did you lend her the money?

"A. I can't say exactly. I don't know all the details.

"Q. Was it a week?

"A. I don't know.

"Q. Was it a month?

"A. I don't remember. It is impossible as I don't know the details or remember the details.

"Q. Did you get a note from her?

"A. Yes, sir.

"Q. What is that date?

"A. I don't recall the exact date. I think you have it here on the record.

"Q. Was this the note that you referred to (indicating)?

"A. That's it as it looks like it.

"Q. Note dated October 14, 1922, payable three months after date, \$500, signed by Annie Hammer?

"A. Yes, sir.

"Q. According to that note you loaned her \$500?

"A. Yes, sir.

"Q. How did you happen to get this note from her?

"A. I asked her for it.

"Q. Where did you ask her for it?

"A. I don't recall.

[fol. 33] "Q. You don't know where you were when this note was given?

"A. I don't recall.

"TESTIMONY OF HERMAN WARTON

"Q. Do you know Mrs. Hammer, the bankrupt?

"A. I do.

"Q. How long have you know- her?

"A. Four years.

"Q. She is a relative of yours?

"A. No, sir.

"Q. You come in frequent contact with her?

"A. No, sir.

"Q. Do you know her intimately?

"A. No, sir.

"Q. Did you ever have any transactions with her?

"A. Just loaned her money.

"Q. How many times?

"A. Twice.

"Q. When?

"A. Middle of 1922. I do not know the month.

"Q. How did you happen to loan money to her?

"A. I was up at the house.

"Q. Whose house?

"A. Mrs. Hammer's house.

"Q. House? Where does she live?

"A. 253 Park Avenue.

"Q. How did you happen to go up there?

"A. Went to see my brother-in-law.

"Q. Who is he?

"A. Her son.

"Q. What was it she said to you on the first occasion she loaned money?

"A. She asked if I could loan her some money.

"Q. What did she say?

"A. What?

"Q. What did she say?

"A. She didn't say.

"Q. What else did she say?

"A. Nothing else as I told her I thought I could.

"Q. Did she tell you the amount?

"A. I asked how much and she said \$400, and I said I couldn't loan her \$400 at once.

[fol. 34] "Q. Who else was present?

"A. I don't think nobody was present in the room at that time.

"Q. And you remember the date of that conversation approximately?

"A. No, sir, I do not.

"Q. How long after this conversation did you give her any money?

"A. I think it was two weeks, but about two weeks.

"Q. Where did you give it to her?

"A. At my house.

"Q. She called at your house also?

"A. She does occasionally.

"Q. And how much money did you give her?

"A. At that time?

"Q. Yes?

"A. \$200.

"Q. In cash or check?

"A. Cash.

"Q. Where did you get the money?

"A. Well, I carry it and had it with me.

"Q. When was the next time that Mrs. Hammer asked you for money?

"A. There was no next time. I gave her \$200, and told her \$200 a few weeks later.

"Q. Where did you give her that?

"A. My house.

"Q. And where did you get the \$200?

"A. Saved it also.

"Q. In the two weeks?

"A. No, in two weeks I didn't save it.

"Q. I understood you to say two weeks after you let her have another \$200. Are you mistaken?

"A. Possibly I did.

"Q. You say you saved that?

"A. Partly. I didn't exactly take that money and put it away and save this for her.

"Q. You gave her all you had on the first occasion and that was \$200?

"A. Yes.

[fol. 35] "Q. And the next time you saved in between?

"A. Part of that money, yes.

"Q. You did not have any other money?

"A. Possibly another debt would be paid to me and that is how it accumulated and I could not save \$200 out of my salary.

"Q. Do you know where you got the last \$200?

"A. I don't remember how it came to me.

"Q. How did you happen to go—how did you happen to put this lady in bankruptcy?

"A. I asked her for the money and she gave me a note and when the note came due I asked her again, and she said she didn't have it to give to me.

"Q. Now when you asked for this note, is this the paper that was handed to you?

"A. Yes, sir.

"Q. That note is dated, you will see, December 1, and is for \$400, payable two months after date. You see that, don't you?

"A. Yes, sir.

"Q. So the loans were made by you prior to that time?

"A. Yes, sir.

"Q. You do not know just exactly when?

"A. No, sir.

"Q. In her schedules the bankrupt's reference to you as a creditor is as follows: Herman Warton, 1653 Bathgate Avenue, Bronx; for money loaned to petitioner on or about December 23, 1922. Is that right?

"A. Money loaned and just for that amount? I gave her money at that time?

"Q. Yes, on or about December 23, 1922?

"A. I do not think I gave her any money in December.

"Q. This is not correct?

"A. I don't say.

"Q. Do you say yours is correct?

"A. I don't remember giving her money in December.

"Q. Then her statement is not correct, is it?

"A. Well, I don't remember giving her. I don't know about her statement.

[fol. 36] "Q. Did you give her any money on or about December 23?

"A. Not in December.

"Q. You look at these two notes, December 1st and October 4th?

"A. October 14th.

"Q. In the same writing, aren't they?

"A. I don't think they are according to my knowledge.

"Q. Did you write out these notes? I am referring to the note of December 1st?

"A. No, sir."

LOUIS H. TRINZ, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Mr. Trinz, the Court advises you that if any question is put to you now, the answer to which you claim will tend to connect you with the commission of a crime or to disgrace you in the eyes of your fellow men, you may decline to answer that question. Now proceed.

Direct examination by Mr. Wolff:

Q. You have been advised of that by myself, have you not, Mr. Trinz?

A. I think I have, yes, sir.

Q. Are you the same Louis H. Trinz, who is described in Government's Exhibit 3 as one of the petitioning creditors in the involuntary petition of Annie Hammer, alleged bankrupt, filed in this court on April 18, 1923, at 3:40 p. m.?

A. I am.

Q. Is that your signature on that petition (handing paper to witness)?

A. It is.

[fol. 37] Q. And did you acknowledge that before a Commissioner of Deeds, or a Notary Public?

A. No, I acknowledged it before some stenographer there.

Mr. Wolff: Well, it is a notary public.

Q. Do you recall, Mr. Trinz, being in the office of Referee Thayer, at Yonkers, New York?

A. I do.

Q. You saw Referee Thayer on the witness stand this morning?

A. I did.

Q. The same man before whom you testified on October 25th, 1923?

A. He is.

Q. Before you began to give your testimony did the Referee administer to you an oath in substance as follows:

"Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?"

Mr. Elder: I object to that as incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I did.

Q. You mean he did?

A. He did.

Mr. Wolff: I have marked out what this witness is said to have testified to, and I wish your Honor would correct me if I read anything except what your Honor has admitted.

Q. On page 64. I will start with the question—you have heard [fol. 38] the testimony read? I think I can make a blanket question. You have heard the testimony read by the stenographer to the jury while sitting in this courtroom as your testimony, have you not?

A. I did.

Q. As far as you recall, was that testimony read as your testimony this afternoon by the stenographer while you were in the courtroom, the testimony that you gave before Referee Thayer on October 25th, 1923?

Mr. Elder: I object to that as incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. I recollect it as such.

Q. You recollect the question, "You did loan her some money?" And your answer, "Yes, sir." Do you recall that question?

A. I do.

Q. And you recall that answer?

A. I do.

Q. Did you ever loan Annie Hammer any money?

A. No, sir.

Q. I speak not alone at this time, but at any time in your life, did you ever loan her money?

A. No, sir.

Q. Did Annie Hammer ever give you a promissory note in consideration of a loan you made to her?

A. No, sir.

Mr. Wolff: If your Honor please, I offer in evidence the note mentioned in the testimony which is the promissory note described in the indictment.

Mr. Elder: I object to his telling what it is.

Mr. Wolff: Very well, I offer in evidence this proof of claim and the note in question.

[fol. 39] Mr. Elder: Your Honor, I object to his doing that after you telling him not to do so.

The Court: Just offer it without stating what the document is.

Mr. Wolff: It was put in evidence before the Referee.

Mr. Elder: That was an improper remark, if your Honor please.

The Court: Gentlemen of the jury, disregard these statements of counsel; they are improper. They are statements of fact which are not any basis upon which the jury could reach a verdict.

Mr. Wolff: I would like that your Honor pass upon whether my remarks are proper rather than have counsel pass upon it.

The Court: The Court has passed upon it as clearly as the Court knows how. Objection sustained.

Q. Mr. Trinz, I show you a promissory note dated October 14th, 1922.

Mr. Elder: Now, if your Honor please——

The Court: Now I will show you how to try the case, if you want me to. Show the witness the paper and see if he recognizes the paper.

Q. Mr. Trinz, I show you a document, the smaller one of the two, and ask you if you ever saw this document before (handing witness)?

A. I did.

Q. Will you state to the Court and jury the circumstances under which you received that document, and any conversation you had [fol. 40] at the time with the defendant Charles Hammer?

A. This was given to me by Mr. Charles Hammer.

Q. When?

A. As nearly as I can recollect, several days or weeks after I signed the petition in bankruptcy as one of the petitioners.

Q. You signed the petition in bankruptcy on April 19, 1923, is that correct?

A. I can't recollect, I presume so.

Q. I show you the petition (handing witness)?

A. It says here the 17th day of April, 1923.

Q. That date is the day on which you signed the petition in bankruptcy?

A. Yes, sir.

Q. Until after the time you had signed this petition in bankruptcy, had you ever seen that note which you hold in your hand?

A. No, sir.

Q. About how long after the date that the petition was filed was that note handed to you?

A. I think I answered that question, a few days or a few weeks after I signed the petition.

Q. Are you quite certain it was after the time the petition was signed by you?

A. Yes, sir.

Q. You now state you never saw that note before the time you signed that petition?

A. I did not.

Q. Who handed you that note?

A. Mr. Charles Hammer.

Q. Where did he hand you that note?

A. In his place of business on 45th Street.

Q. Is that between Broadway and Sixth Avenue?

A. It is.

Q. On the north side of the street?

A. It is.

The Court: What city?

The Witness: New York.

The Court: What Borough?

The Witness: Manhattan.

[fol. 41] Q. Do you recall the day of the week or whether it was on a week day when that note was signed?

A. It was on a week day because the business places were open. They were all open.

Q. Was it during business hours?

A. I do not think it was the evening, but it may have been the evening. I think that the place was open.

Q. It was after six o'clock?

A. That I cannot say.

Q. Who was present when he handed you the note?

A. I cannot say specifically.

Q. But you know he gave you that note?

A. That I know.

Mr. Wolff: I now offer the note in evidence, if your Honor please.

Mr. Elder: I object to it as irrelevant, your Honor, and incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

(Paper marked Government's Exhibit 9 in evidence.)

Q. Now will you state to the Court and jury what conversation you had with Charles Hammer at the time when he handed you Government's Exhibit No. 9?

A. No conversation except that he told me to keep it, as far as I can recall.

Q. Now prior to that time that the note was handed to you, did you have any conversation with Charles Hammer respecting an indebtedness between Mrs. Hammer and you, about the time the petition was signed?

A. Mr. Hammer requested me to sign this petition.

Mr. Elder: I object to that as irrelevant and incompetent and move to strike it out.

[fol. 42] Mr. Wolff: I consent the answer be stricken out, and that the witness answer yes or no.

The Court: Yes.

The Witness: Yes.

Q. Will you state what was said between you, what he said to you and what you said to him?

A. Mr. Hammer requested that I sign this petition in bankruptcy for him.

Mr. Elder: I move that the answer to the question be stricken out as incompetent and irrelevant.

The Court: Motion granted. Strike it out. You will have to reproduce his language as nearly as you can recall.

Q. In substance, what was said to you, and as well as you can remember what you said to him?

A. It is a year and a half ago.

The Court: Just do the best you can, and when you are telling us about Mr. Hammer, put it in the first person instead of saying "he," and then duplicate as nearly as you can the statement he made to you.

Mr. Elder: Your Honor, I can shorten this if you will permit me. I withdraw the objection as based upon incompetency and will make it as to irrelevancy so that would obviate——

The Court: With that modification, Mr. Elder, the objection is overruled and you can have your exception. The answer may stand.

Q. Do you recall what he said to you, and you said to him, and in as near the same language as possible? Now who spoke first, you [fol. 43] or he?

A. Mr. Hammer naturally must have spoken first because I knew nothing about this. I think he did speak to me.

Q. What did he say to you as best you remember?

A. It is over a year and a half ago, and I am afraid I can hardly—over a year and a half ago and I do not think my memory is fresh as to all that.

Mr. Elder: Would you kindly request him to answer the question in as few words as possible?

Q. Did he say, "Louis, I want you to sign this petition?"

Mr. Elder: Objected to as leading.

+ The Court: Objection sustained. Do not lead him.

Q. Mr. Trinz, you do not have to remember the exact words, but you may say what you remember?

Mr. Elder: If your Honor please——

The Court: Do the best you can, Mr. Trinz.

+ A. In as few words as possible, I was requested by Mr. Hammer to sign this petition in bankruptcy for him, the wording I certainly can't remember this day, it was over a year and a half ago.

Q. Mr. Trinz, don't you realize that the petition was signed in April, 1923?

A. It is a year ago.

Q. Did you state that up to that time you knew nothing about it?

A. I knew nothing about it.

[fol. 44] Q. Did you tell him so, that you knew nothing about this debt?

A. I do not think the question was even asked as far as I can recollect. I knew nothing about this case.

Q. Who asked you to do it?

A. Mr. Hammer.

Q. Did Hammer owe you anything?

A. No.

Q. Did you ever loan her anything?

A. No.

The Court: Mrs. Hammer.

The Witness: No.

Q. After the occasion of the signing of the petition, did you have any conversation with Charles Hammer?

A. No, the matter was just dropped; I forgot all about it.

Q. When is the next time you spoke to Mr. Hammer regarding the bankruptcy of Annie Hammer?

Mr. Elder: Your Honor, he has just said there was no other time.

The Court: Did you ever speak to Charles Hammer again on the subject?

The Witness: Not until I was subpoenaed to appear before the Referee in Yonkers.

The Court: What conversation, if any, did you have with him then, tell the jury?

A. At that time I consulted him on the telephone, telling him I had been subpoenaed to appear before the Referee and asking his advice.

Q. What did he say and what — you say? State what the conversation was?

A. I don't recall the answer exactly but I think he phoned me again to let me know that I was to appear before some lawyer downtown the following morning who, of course, -as used to assure me [fol. 45] that everything would be all right.

Q. Did Mr. Hammer send you to that lawyer?

+ A. He did; as a matter of fact he accompanied me there.

Q. Mr. Hammer took you to the lawyer's office?

A. Yes.

Q. Where was that lawyer's office located, do you remember?

+ A. In this vicinity, in Broadway.

Q. Was it Mr. Stutsky, or Mr. Gerber?

A. First I went to Stutsky's office.

Q. Do you know that Mr. Stutsky was the attorney in this bankruptcy proceeding?

Mr. Elder: Objected to as incompetent.

The Court: Sustained.

Q. What was said in Mr. Stutsky's office in your presence and in the presence of Mr. Hammer?

A. In as few words as possible, the matter was gone over, and an attempt was made to assure me that I had nothing to worry.

Mr. Elder: I object to that statement.

The Court: Sustained.

Mr. Elder: I move to strike the answer out.

Mr. Wolff: I will consent.

The Court: Motion granted.

By the Court:

Q. What was said by the different parties at that interview, in the presence of the defendant?

Mr. Wolff: If your Honor please, I will lead him as to that.
[fol. 46] Mr. Elder: No, no, I do not want any leading.

The Court: Be careful not to put leading questions.

Mr. Wolff: I will try my utmost.

Q. On October 15th, 1923, did you receive any paper in this bankruptcy proceeding?

A. On October 15th, 1923? I think that was the time I was subpoenaed to appear before some Referee in Yonkers.

Q. Was it at that time you telephoned Mr. Hammer?

A. That was the time.

Q. And was it about that time when you went with Mr. Hammer to Mr. Stutsky's office?

A. No, it was the following morning.

Q. When you got to Mr. Stutsky's office, did any conversation take place?

A. Yes.

Q. Try to tell the Court and jury in as nearly the exact language as you can, what was said by you, Mr. Stutsky and Mr. Hammer?

A. I cannot say word for word, but I can give you generally about that; that I was very much upset about it.

Mr. Elder: Objected to.

The Court: Just what you said, not how you felt.

The Witness: It is impossible for me to repeat the language of what was said.

The Court: Repeat as nearly as you can the language of the different parties to the conference.

By Mr. Wolff:

Q. Where is the office located?

A. In this vicinity, somewhere, on Broadway, I do not know the number. In the Park Row Building.

[fol. 47] Q. Was there any discussion regarding your testimony?

Mr. Elder: No, no, I object.

The Court: The Court holds that is competent as far as it has been put; exception to the defendant.

Q. Was there any discussion in regard to your testimony to be given by you before the Referee, at Stutsky's office that morning?

Mr. Elder: I object to that as incompetent.

The Court: Objection overruled.

Mr. Elder: Exception.

A. There was discussion.

Q. And who was present at that discussion?

A. Mr. Stutsky, Mr. Hammer and myself.

The Court: Do you remember anything there that Mr. Hammer said at that time?

The Witness: Not word by word.

The Court: In substance.

The Witness: In substance I can say.

Q. Tell us what Mr. Hammer said?

A. In substance the statement was inasmuch as I was so much upset I was not to worry, everything would be all right, merely to go before the Referee and answer the questions as well as I possibly could, and say I do not know, or words to that effect.

Q. Did you on that occasion tell him that you were worried about?

[fol. 48] Mr. Wolff: He has so testified.

Mr. Elder: Objected to.

The Court: It is leading. Sustained.

Q. Mr. Trinz, how long do you know the Hammers?

A. More than three years.

Q. Until this occasion you have been very frequently with them, haven't you?

A. Very.

Q. Did Mr. Stutsky take any part in this conversation at his office?

A. He also assured me there was nothing to worry about and to appear before the Referee and everything would be all right.

Q. Did Mr. Stutsky advise you what your testimony should be?

Mr. Elder: I object to that as incompetent.

The Court: Do you object as calling for a conclusion? It is competent.

Mr. Elder: No, only that it is suggesting the answer to the witness. If he has a recollection he ought to be able to tell the jury what was said.

Q. Mr. Trinz, what was the first thing that was said when you came into Mr. Stutsky's office that morning?

The Court: That you remember.

Q. The first thing you remember.

A. I only recall that he was on the telephone. I really can't say exactly what happened, the conversation.

Q. Well, what is the first thing you remember?

A. I cannot truthfully tell you because I was very much upset.

[fol. 49] Q. Do you remember anything?

A. I remember the substance of the conversation which I quoted.

Q. What is the first thing you remember of the substance of the conversation?

A. Undoubtedly when Mr. Hammer presented to Mr. Stutsky my nervousness and fear for going through with this witness subpoena, and what was the general conversation you might lead from that.

Q. Did you tell him why you were afraid to go through with it?

A. I stated probably, I don't recall the words, that I did not like the whole matter; I did not like anything about it at all, and was very anxious to get cleaned up as quickly as I possibly could.

Q. Did you tell him you did not want to testify?

A. I did.

Q. Were Mr. Stutsky and Mr. Hammer present at the time?

A. They were.

Q. And who spoke to you first, if you remember, Mr. Stutsky or Mr. Hammer?

A. I cannot—

Q. Do you remember M. Stutsky saying anything to you at all in Mr. Hammer's presence?

A. I did say that they advised me about not worrying and to answer questions as well as I could up there, and to keep saying I do not know. That is as far as I can recollect of the entire transaction.

Q. Did you go to any other lawyer's office with Mr. Hammer?

A. From there we went to Mr. Gerber, a lawyer on Broadway.

Q. Have any conversation there in the presence of Mr. Hammer?

A. Conversation ran along the same lines, and he further assured me that everything was all right and not to worry.

Q. Who?

A. Mr. Gerber.

[fol. 50] Q. Did Mr. Hammer take any part in the conversation?

A. There was general discussion.

Q. What was the discussion, Mr. Trinz?

Mr. Elder: No, I object to this, if your Honor please.

The Court: Yes, think.

A. The matter was taken up, I had been very much afraid, very much annoyed—

Q. Did you state why you were annoyed to Mr. Gerber and Mr. Hammer?

A. Well, it was quite evident; I had been subpoenaed and I was annoyed at that. I did not care to go up and testify. I did not like the whole matter.

Q. Did you tell them at the time that you did not like to go up there?

A. Of course, I did not want to be mixed up in anything of that kind.

Q. Did you tell them why you did not want to be mixed—

A. No reason at all, only I was not able to—

Q. What I asked you was, did you tell them why you did not want to get mixed up in this matter?

Mr. Elder: Your Honor, I must object to these questions. This witness belongs to the prosecution. He asked what was said. I object to any of these questions—they are cross examination.

The Court: The Court believes that the Court is entitled to ask this question of the witness: Do you desire to testify for the Government in this matter, or are you here against your wish?

The Witness: I am here and desire to testify for the Government.
[fol. 51] The Court: You are?

The Witness: Yes, sir. This is a matter six months ago; I cannot tell everything verbatim.

The Court: What is your business?

The Witness: Advertising man.

The Court: How long have you been in business?

The Witness: About ten years.

The Court: How old are you?

The Witness: Twenty-nine.

The Court: Can you now recall what took place in Mr. Gerber's office?

The Witness: Yes, I have told you what I remember.

The Court: Just tell the jury.

The Witness: I am trying to think in a general way what took place. He went to this man's office with the apparent intention of persuading me not to be afraid or frightened, and to go right ahead and keep testifying. Everything was all right.

Mr. Elder: I ask that all that answer be stricken out.

The Court: Motion granted. Just state, if you remember, what was said, if you can remember what was said.

The Witness: I did, I cannot say verbatim the conversation.

The Court: Was anything said about your having committed perjury when you signed the petition in bankruptcy? You told us here today you had no claim against this estate and that you signed the petition saying you had. Was anything said about that?

[fol. 52] The Witness: Yes.

The Court: Tell the jury what was said about it.

The Witness: I was subpoenaed by the Yonkers referee, and we went down there to find out what I should do. I was entirely at a loss and I wanted to get out of this thing.

Mr. Elder: I move to strike that out.

The Court: Motion granted. Just tell us what you said not what you thought, when you went down there to Mr. Stutsky's office or Mr. Gerber's.

The Witness: I said I did not care about this; that I should never have gotten into it; it was not my intention. I did not think I had done such a wrong and I wanted to get out of it as quickly as possible and did not want to testify, and I was pacified and assured that everything would be all right, merely go up there and answer a few questions, and that would be the end of it.

Mr. Elder: I move to strike out after "then I was pacified and assured everything would be all right."

The Court: You want it all stricken out?

Mr. Elder: Well, after the words, beginning, "I was pacified."

The Court: Stricken out.

Q. Mr. Trinz, you say your recollection is somewhat faulty about what occurred?

A. I know the occurrence, Mr. Wolff, but I do not know the conversation that took place word for word.

Q. Did you sign a statement of your transactions in this matter at my request?

A. I did.

[fol. 53] Q. I show you the statement and ask you if your signature appears at the bottom (handing paper)?

A. It does.

Q. Now I ask you whether, if you read that statement, it would refresh your recollection as to these transactions?

A. It might.

Q. Read it carefully then.

A. Read it aloud?

The Court: No, to yourself. Have you read the statement?

The Witness: Yes.

The Court: Is your recollection refreshed?

The Witness: Yes, but it does not emphasize anything further than what I said, that I was told by Mr. Hammer and Mr. Stutsky.

The Court: Was anything said by the defendant Hammer with relation to the testimony that you were to give up at the Referee's office?

The Witness: Yes.

The Court: Then tell us what was said about that?

The Witness: I was told to go up to the referee and not to worry.

The Court: That is what Hammer told you?

The Witness: I was just to go up to the referee in Yonkers and testify, and state that I did not know exactly, or something, but money was loaned to me and so forth, or her, I did loan money to her.

Q. What was that last?

A. I was told not to worry and to state that I did not know when the money was loaned to Mrs. Hammer by me, and I did not know it particularly.

[fol. 54] Q. Do you remember he told you to state that you did not remember when the money was loaned by you to Mrs. Hammer?

A. I think he did, yes.

Q. Words to that effect?

A. Yes.

Q. Did he say anything regarding your testimony if you were asked regarding when you had made this loan?

A. Well, in general he said I was to say I gave money at various times and I did not know exactly the date and so forth.

Q. And did he tell you to say that you had gotten this note before the petition was filed in bankruptcy?

A. No, he did not tell me anything about that matter as far as I can recollect.

Q. But he gave you the note, did he not?

A. He gave me the note.

The Court: Where did he give you the note?

The Witness: In his place of business.

Q. That was after the time the petition was filed?

A. Yes, sir.

Cross-examination by Mr. Elder:

Q. Now you said that you were to go up there and testify—are you listening?

A. Yes, sir.

Q. You said that Mr. Hammer said that you were to go up there and testify and say that you did not know when you loaned the money?

A. Yes, I did.

Q. And you said, "I think he did," didn't you?

A. I cannot recall my answers.

Q. After you stated right here on the stand that Mr. Hammer had said that to you, did you not add, "I think he did"?

A. The minutes would show that.

[fol. 55] Q. Well, what does your recollection show about it?

A. My recollection is this, that I said I think he did, and probably I had reference to the words that he used. I am not sure.

Q. You are not sure then whether he said to you actually that you were to say that you did not remember when the loans were made?

A. I know something to that effect was said but I do not know the words.

Q. What was said about you did not remember whether he said so or not?

A. I do remember he said it.

Q. Then why did you say "I think he did."

A. I am a very poor witness, I imagine. I do not know.

Q. Well, now, before that you said that somebody had said to you to go up there and answer the questions as well as you could and say you did not remember. Do you remember saying that?

A. Something to that effect, yes.

Q. Was it Mr. Hammer or Mr. Stutsky, or Mr. Gerber said that to you?

A. Words to that effect, all told me, about all three.

Q. All at once, or each speak apart?

A. Each speaking apart.

Q. Did you try to borrow money of Mr. Hammer?

A. I did not.

Q. Did you ask him to loan some money to a friend?

A. Yes, I did.

Q. Didn't you testify before the referee—

A. I don't recall the time.

Q. Was it since you signed the petition in bankruptcy?

A. I cannot say definitely.

Q. Did he decline to loan the money?

A. He did.

[fol. 56] Q. And was the loan you wanted ten thousand dollars?

A. I did not want any money.

Q. Was the amount ten thousand dollars?

A. It was that amount, I believe, yes, sir.

Q. Was that before you went to the United States Attorney's office?

A. It was.

Q. Now, don't you remember that it was since?

A. Pardon me, the United States Attorney's office—meaning here?

Q. Yes.

A. It was before, yes.

Q. Now don't you remember that it was since you testified before the referee?

A. I do not remember that at all.

Redirect examination by Mr. Wolff:

Q. Mr. Trinz, did you go to the United States Attorney's office pursuant to a request?

A. I did.

Q. You received a subpoena, did you not?

A. I did.

Q. Did you have a talk with Mr. Hammer after you got the subpoena from me?

A. I did.

Q. What talk did you have with Mr. Hammer regarding that subpoena?

A. You mean prior to seeing you?

Q. Yes.

A. I remember I was at Mr. Hammer's place of business, and he—

Mr. Elder: I object to this, if your Honor please, on the ground that it is incompetent and irrelevant. Is this an attempt to show something not outlined in the indictment?

Mr. Wolff: It is not.

Mr. Elder: It is irrelevant.

The Court: Overruled.

[fol. 57] Mr. Elder: Then if it is of no value tending to impeach the credibility, it is incompetent and irrelevant.

The Court: It is allowed on the theory that the Court supposes it is going to reveal some reference to the transaction with which the defendant is charged, if not, it will be stricken from the record.

Mr. Elder: I except.

Q. When did you tell the defendant that you got a subpoena from me?

A. At his place of business that evening; he sent for the subpoena, which was mailed to my home. He had a memorandum of his conversation. He consulted with Mr. Stutsky or Mr. Gerber but whom I do not know which. I saw him that evening and he again told me not to worry; I was merely to repeat my previous statement. Everything was all right. And to assure me that it will be and to put some confidence in me, he called Mr. Stutsky on the phone and his lawyer spoke to me on the phone to repeat the statement along those lines.

Mr. Elder: Now, your Honor, I move all of this answer be stricken out. What is this, an attempt to suborn a witness to testify falsely before the Grand Jury or in the District Attorney's office, or on this trial?

The Court: Motion granted.

Mr. Wolff: I will tell your Honor the reason why I asked it. Just as an admission against interest. Any statement that the defendant makes which would tend to show an admission of crime even if it was done at this moment would be admissible against him.

[fol. 58] The Court: He said, "Everything would be all right." That is all he said.

Mr. Wolff: He said, to repeat his former testimony.

The Court: Motion granted.

Mr. Wolff: I won't press it.

The Court: Can't you tell us, Mr. Trinz, when it was that you asked this defendant to loan a friend of yours ten thousand dollars? Can you give us any idea?

The Witness: It was not exactly a loan. I asked him to interest himself in this man's business to that amount.

The Court: When?

The Witness: I was asked whether it was prior or after being subpoenaed before the Referee. I can not say. I think it was. I know it was not in the Winter time, it was Spring or Summer, but I can't recall.

Q. You say you have an idea it was last Fall?

A. Yes, apparently it has been before that I appeared before the Referee.

By Mr. Wolff:

Q. Mr. Trinz, was this loan you sought to make for yourself?

A. This was not for myself.

Q. Did you seek him to loan you the money?

A. No, sir.

Q. Or to purchase an interest in the business?

A. Absolutely had nothing to do with me whatsoever.

Q. And you expected to gain no benefit out of it?

A. Absolutely none.

[fol. 59] Q. Was it because that transaction didn't go through you came here to testify?

A. Absolutely not.

Q. Have you any animosity against the defendant Charles Hammer?

A. Absolutely none.

By Mr. Elder:

Q. What was this business?

A. This man was in the dress business.

Q. Didn't you have an interest in that business?

A. I did not.

Q. Didn't you expect to have an interest in it?

A. I did not.

Q. But this gentlemen who had the business was simply a friend of yours?

A. That is all.

Q. And you were trying to get an accommodation for your friend, weren't you?

A. That is all.

Q. And how long had he been your friend?

Mr. Wolff: I object as to how long this third party had been Mr. Prinz's friend.

The Court: Overruled.

A. The past year or more.

Q. Is he still your friend?

A. He is.

Q. Did you say you got a subpoena to go to the United States Attorneys office?

A. I did, in the mails.

Q. Before you got that subpoena, you had been down there, hadn't you?

A. I was not.

Q. Before you got the subpoena, you had talked with somebody connected with the United States Attorney's office, hadn't you?

A. I did not.

Q. Now your memory is pretty good on that, is it?

A. Possibly.

[fol. 60] Q. Well, have you a friend in the United States Attorney's office?

A. I have.

Q. A personal friend?

A. He is.

Q. Did you talk to him about these matters?

A. I did.

By Mr. Wolff:

Q. When was the first intimation that anybody in the United States Attorney's office wanted to see you, what was the first intimation you got?

A. I received from you I think a subpoena.

Q. And previous to that time had any representative of the United States Attorney's office spoken to you?

A. None.

The Government rests.

ARGUMENT OF COUNSEL

Mr. Elder: Now, if your Honor please, I move that your Honor direct the jury to find a verdict of not guilty on the first count in the

indictment upon the ground that there is no evidence whatsoever that would show that this defendant suborned Annie Hammer to testify to anything whatsoever.

The Court: I suppose that is true, isn't it?

Mr. Wolff: That is true.

The Court: Motion granted.

Mr. Elder: I request your Honor to direct the jury to find a verdict of not guilty on the third count in the indictment on the ground that there is no evidence whatsoever tending to show that this defendant suborned Mr. Warton.

The Court: I suppose that is true?

Mr. Wolff: Certainly.

The Court: Motion granted.

[fol. 61] Mr. Elder: Now I request your Honor to direct the jury to find a verdict of not guilty on the ground——

Mr. Wolff: What ground?

Mr. Elder: There is only one left.

Mr. Wolff: Specify it.

The Court: Go right ahead.

Mr. Elder: On the ground that the prosecution has not made out a prima facie case against this defendant on any count in the indictment.

The Court: Motion denied. I do not care to hear argument, Mr. Elder. State the ground of your motion and then take your exception to the denial. I do not care to hear argument.

Mr. Elder: I do not want to argue it, if your Honor has decided, but I would like to get enough reasons in there to make my exception good.

The Court: Oh, yes, you may do that. Take five minutes to put on the record what you wish.

Mr. Elder: I won't take that long. On the ground that this is an indictment for subornation of perjury, and there is the testimony of but one witness here in which it is alleged the perjury arose. The law requires that there should be the testimony of one direct witness with corroborating circumstances, and that there are no corroborating circumstances.

Secondly, on the ground that the evidence is insufficient because the only direct evidence is furnished by the witness Trinz, and that [fol. 62] his testimony is not clear cut and effective as in itself to constitute proof that perjury was suborned by this defendant.

Upon the ground that there is no evidence to show that this defendant knew that the testimony that this witness would give would be perjured testimony.

Upon the ground that the prosecution has wholly failed to make out a case if this is to be a prosecution for subornation of perjury.

Now, if your Honor please, I move that your Honor direct a verdict of not guilty and also move that your Honor dismiss this indictment on the ground that it appears without dispute in the evidence that this alleged false swearing occurred in a proceeding in bankruptcy, and that that is not perjury under the United States statutes. It might be a violation of Section 29 of the Bankruptcy

Act, but that is not perjury, and that therefore, for false swearing in a bankruptcy proceeding there can be no prosecution for perjury. There is no such crime as subornation of perjury based upon false swearing in violation of Section 29 of the Bankruptcy Act.

The Court: Has the matter ever been the subject of adjudication by the courts?

Mr. Elder: I think it has been decided by the Circuit Court of Appeals in this circuit as well as in others.

The Court: Will you give me the authorities; I will send for them at once.

Mr. Wolff: I will give your Honor the authority.

The Court: No, no.

Mr. Elder: *Rosenthal v. United States*, 248 Federal, *Kahn v. United States*, 214 Federal, *Olney v. United States*, 219 Federal. [fol. 63] Mr. Wolff: *Epstein v. United States*, 196 Federal, 354, *United States v. Thompson*, 31 Federal, 331.

Mr. Elder: Of course, I have not argued these because your Honor told me you did not want to hear argument and I respect your Honor's wishes, but it will give me a great deal of pleasure to elucidate this class of charge.

The Court: If necessary, you will have all the opportunity in the world later on. Motion denied. Proceed, Mr. Elder, if you please.

Mr. Elder: No.

The Court: The defendant rests?

Mr. Elder: Yes, sir. Now I renew my motion to direct a verdict upon the ground the prosecution has not made out a case and I move to dismiss the indictment on the ground that it does not state any crime of perjury or subornation of perjury, and I move that your Honor direct the acquittal of the defendant upon the ground that this alleged false swearing was in a bankruptcy proceeding and cannot be prosecuted under the perjury statute.

The Court: Motion denied.

Mr. Elder: And that no case has been made out as to false swearing and no case as to subornation has been made out.

The Court: Motion denied.

Mr. Elder: Exception.

The Court: How long will you take to sum up, Mr. Elder?

Mr. Elder: I am not going to sum up. This is not a jury case, if your Honor pleases.

[fol. 64] The Court: Very well. How long do you want to sum up, Mr. Wolff?

Mr. Wolff: Fifteen minutes. I understand Mr. Elder is now foreclosed from summing up?

The Court: Yes, Mr. Elder is now foreclosed from summing up.

Mr. Elder: May I ask an exception to all of those rulings, your Honor?

The Court: Yes, if you find you did not take them, there is an exception given to each ruling of the Court adverse to the defendant.

(Mr. Wolff summed up the case to the jury on behalf of the Government.)

(During the summation of Mr. Wolff the following took place):

Mr. Elder: I object to this, if the Court please.

The Court: On what ground?

Mr. Elder: Prejudice. It is not incumbent upon the defendant to call a witness. He is not to be subjected to criticism for not having done it.

Mr. Wolff: I am not stating anything about the defendant's lack of taking the stand.

The Court: Now the Court will rule that the defendant is not required to take the stand, and no inference negative to him in the slightest degree may be taken by the jury as a result of such failure. The Government is required to prove its case beyond a reasonable doubt that he is the party who committed the crime. The jury is entitled to draw any unfavorable inference against either party to a prosecution which they think it warranted by reason of a failure [fol. 65] of a party to present to the jury the testimony of any witness, with the exception of the defendant, whose testimony would elucidate the matters in issue between the parties.

Mr. Wolff: I haven't endeavored to criticise. I have not mentioned anything about the defendant not taking the stand.

The Court: Yes, the court did not so understand.

Mr. Elder: May we have all of this part taken down? Because I object to it, your Honor. I object to it because there is no obligation on the part of the defendant to call any primary or any other witness in the whole world, and he is not to be criticised because he did not.

The Court: Do you agree with Mr. Elder upon that proposition?

Mr. Wolff: I certainly do not, sir.

The Court: The objection is overruled, and the absence of any primary witness on the stand may be commented on by the attorney for the United States Government.

Mr. Elder: I except.

Mr. Wolff (addressing the jury): It is quite obvious, gentlemen, that Annie Hammer could enlighten you as to whether or not she received the money from Trinz. Who in the world would know better. She received the money from Trinz. Who would know better than she whether she signed that note and whether she gave it to him? That note dated back months before the petition in bankruptcy was signed and filed. Who signed and filed, to foist that note [fol. 66] upon the referee in bankruptcy and the creditors in that bankruptcy proceeding. That note that Trinz did not see until after the petition in bankruptcy was signed and filed. Why did they give him this note? This accurate mind of Hammer's sought to evolve something to explain the situation which had been created.

They were panic-stricken. They ran to two lawyers. Now the statements in evidence may show you that Gerber was the lawyer for the petitioning creditors and that Stutsky was the lawyer for the bankrupt, Annie Hammer.

And what a strange proceeding it was that Mr. Charles Hammer should accompany Trinz first to Stutsky's office and then to Gerber's office—adverse interests protecting the creditors.

Mr. Elder: I object to this, your Honor, there is no evidence here of any situation disclosed which indicates adverse interests under the Bankruptcy Act. Anybody can go into bankruptcy.

The Court: I did not think that was in this case.

Mr. Wolff: There are documents in evidence which show Mr. Gerber, the attorney for the petitioning creditors. They are in evidence.

The Court: Mr. Elder states that adverse interests have not been disclosed. You have only to satisfy the jury with the proof that this defendant instigated this man to go on the witness stand and swear falsely. You can get at that very quickly.

Mr. Wolff: Very well. I do not intend to argue long against myself. I just want to point out, gentlemen, a few simple facts. [fol. 67] In the first place, the witness Stutsky was seated in the courtroom and heard the testimony given by Trinz; testimony very damaging to the defendant. Why didn't he take the witness stand?

Mr. Elder: I object to this, your Honor, and I ask that the jury be charged to disregard it. There is no evidence in this case that Stutsky is seated in the courtroom, and even if he were——

The Court: Objection sustained. Disregard it, gentlemen.

Mr. Wolff: The minutes show, the stenographer's minutes show that Mr. Stutsky is counsel for the defendant. I saw it on the stenographer's minutes.

Mr. Elder: Do you write shorthand?

Mr. Wolff: Yes, I do. Gentlemen, regardless of whether or not Stutsky is in this courtroom, it has been shown that there was no effort by the defendant to procure the attendance of Stutsky to contradict what Trinz said on the witness stand. That is obvious to you.

Now just for a brief review of what testimony was given. Unquestionably you are satisfied in your minds that there was an oath administered by Referee Thayer. Now undoubtedly you are satisfied that there was never a loan made by Trinz to Mrs. Hammer. You must be satisfied from the testimony and evidence given to you, from the note and from the documents in evidence, that Trinz was induced, procured and counseled by this defendant to go to that Referee's office first for the purpose of swearing falsely to that petition, [fol. 68] and then to follow it up he gave him that fictitious note, a note to substantiate the loan, but which in your minds must rule as clearly and convincingly as possible that this loan was never made. And lastly, something which I cannot substitute for you, but which I ask you to do in going to the juryroom, is the manner of Trinz. That he has made one misstep. You have it before you, a man who has made a clean breast of everything that ever was done by him. Thirty years of age, I believe he said he was; married, and in the advertising business. He knew these people for three years. He felt friendly towards them, has no animosity against them.

They tried to make you believe that Trinz tried to get \$10,000 from this poor Mr. Hammer; but I assure you gentlemen that if they had any evidence tending in the slightest way to substantiate that Trinz tried anything improper with regard to such a thing, that the astute counsel for the defendant would not have overlooked such material. You know he would not.

It was first described as a loan, first it was described as a loan to Trinz, and then you find that it was neither a loan, and that it would not benefit Trinz. They wanted to create the impression by inference, just by inference, that Trinz was trying to get \$10,000 and that was why he came down to the District Attorney's office. You do not believe that Trinz tried to do that, but you must believe that an impression was attempted to be created, to foist upon you something that never happened.

[fol. 69] You see the defendant sitting here. Compare him with Trinz.

Mr. Elder: What, physically, or the color of his hair, or how do you mean?

Mr. Wolff: I have nothing to state.

Mr. Elder: I object to that.

The Court: I regret your doing that. Do not make up comment which is just as improper as Mr. Wolff.

Mr. Elder: I do object to any attempt to make physical or psychological or other comparisons between the defendant and the witness.

The Court: Objection sustained.

Mr. Wolff: If your Honor please, I submit that the defendant is always an exhibit in the case. That his personal appearance is always required during the trial.

Well, gentlemen, regardless of all interruptions, regardless of the false impression that has been attempted to be created, when you go into your juryroom you have one conclusion left, and that is that Charles Hammer procured Louis Trinz to violate his oath and testify falsely.

Mr. Elder: I just wanted to make sure that I noted an exception there where——

The Court: Let an exception appear there.

Mr. Elder: Where I objected to the comment in reference to Annie Hammer.

The Court: Yes.

[fol. 70] CHARGE OF THE COURT TO JURY

GARVIN, J.:

MR. FOREMAN AND GENTLEMEN OF THE JURY: This case which seemed to be somewhat complicated as it was first presented, has resolved itself into a comparatively simple issue.

As now to be submitted to you, the Government has charged that the defendant, Charles Hammer, husband of Annie Hammer, procured or induced Louis H. Trinz to testify falsely as a witness in the bankruptcy proceedings of Annie Hammer, before Referee Thayer at Yonkers.

The particulars under which this claim that Hammer, the defendant, procured Trinz to testify falsely arose, and in which it is alleged that he did induce Mr. Trinz to testify falsely, are these:

It is claimed by the Government that Annie Hammer never borrowed any money from Louis Trinz, and that Louis Trinz never loaned her any money, and that she did not, prior to April 18th, 1923, sign, execute and deliver to Trinz a promissory note for the sum of \$500.

It is claimed by the Government that the Government has proved that Louis Trinz testified that prior to April 18th, 1923, he loaned to Annie Hammer and she borrowed from him the sum of \$500 or some other sum. That prior to April 18th, 1923, he, Louis Trinz, received from Annie Hammer a promissory note for the sum of five hundred dollars, signed, executed and delivered. It is claimed that he so testified.

It is claimed by the Government that the testimony was false; that she knew it was false when he gave it, and that he committed perjury, Louis Trinz. But that before he committed perjury the [fol. 71] defendant on trial had procured him by persuasion, inducement or some other motive, to do as the Government claims it has proved he did, namely, commit perjury in these matters, which were material matters, before the Referee in Bankruptcy, Mr. Thayer.

Now it is for you, gentlemen, to determine whether the Government has proved every element, every material element, in this charge against the defendant on trial, Hammer. First of all, it should be understood that this indictment is no proof whatever against the defendant, it is but the customary manner of preferring a charge against him which must not be taken into consideration by you when you come to determine whether or not his guilt has been established.

Furthermore, the defendant in every criminal trial has the presumption of innocence, that presumption of innocence is as though he had entered the trial, having produced before you evidence of his innocence, which evidence must be overcome by the Government through the production before you of testimony which not merely overcomes the presumption of innocence which establishes to your satisfaction the guilt of the defendant beyond a reasonable doubt. It is not necessary that the Government should prove the defendant's guilt to an absolute certainty, but, if after you have considered the case when it is finally submitted to you, no one of you gentlemen of the jury is able to advance any doubt for which he can give a reason that appeals to human intellect, then you have met the test which is required and which would justify you in bringing in a verdict of guilty.

You must not in the case, gentlemen, allow the fact that the [fol. 72] defendant has not taken the stand to testify in his own

defense to influence you against him, to arouse prejudice among you against him, nor must you permit yourselves to infer, by reason of his failure to testify in his own behalf, any conclusion which would be unfavorable to the defendant. There is nothing more strongly set forth in our system of jurisprudence than that the defendant is not required to offer himself as a witness, and that no unfavorable inference from his failure to give testimony in his own behalf can be drawn.

You must limit your consideration of the case, gentlemen, only to the testimony that has been produced before you, and on the exhibits which have been received in evidence. You must eliminate from your minds all of the episodes which have characterized the trial and which were not part of the evidence as presented; that is, the testimony of witnesses or the exhibits received. All colloquy of counsel or discussions with the court or rulings by the court must be dismissed absolutely from your mind. They are no part of the evidence taken here and they must not be permitted to influence you either for the government or for the defendant.

If you or any of you have come to the conclusion that the court has an opinion with respect to the defendant's guilt or innocence, that opinion, if you believe the court entertains it, must not be allowed to weigh with you in the slightest degree in your determination of this issue, because the responsibility of determining the guilt or innocence of the defendant is for the jury, and for the jury alone.

You are entitled, gentlemen, to weigh and must weigh the testimony [fol. 73] of every witness carefully. You are entitled to examine into the testimony to ascertain whether a witness has any motive in testifying, to see whether you find he has any bias, and if you conclude that either one or both of these exist, and his testimony has been affected to such a degree as to make it unreliable, then you may take all of that into account. If you conclude that a witness has wilfully testified falsely to any material fact you may disregard not only that testimony which you find to be false, but any and all of the testimony given by him, if you so conclude. If you find that a witness has attempted to testify truthfully before you, when his testimony is so inherently improbable as to cause any reasonable man to reject that as unworthy of belief, then, gentlemen, you may treat the rest of his testimony with such doubt as you believe is justified by any such circumstances, if you find them to exist.

The crime with which the defendant is charged is serious in character. Upon the maintenance of high standing of judicial proceedings throughout the country depends to a great extent the confidence of the people that live in this country, and the form of government under which we live, and it is of utmost importance that every effort should be made to prevent false swearing or the procurement of false swearing in any judicial proceeding. So much for the importance of the case to the government.

The crime of which the defendant is charged is serious to the government and serious to him as an accused, and you must not be quick to find him guilty merely because the charge is one that is

revolting to an honest man, but on the contrary you must be careful [fol. 74] to determine whether or not the evidence presented is sufficient to establish his guilt beyond a reasonable doubt, and if you find such evidence has not been presented, whatever may be your opinions as to the guilt or innocence of the accused on trial, if you find that the guilt has not been established here then your verdict must be not guilty.

I am sure gentlemen, you will give this case the careful consideration which its importance deserves.

DEFENDANT'S REQUESTED INSTRUCTIONS TO JURY

Has the defendant any exceptions to the charge, Mr. Elder?

Mr. Elder: Yes, your Honor.

The Court: Will you record them please?

Mr. Elder: I request your Honor to charge that the case against the defendant is that he procured friends to testify falsely in bankruptcy proceedings before Referee Thayer in Yonkers. He is not charged with that offense, and I request your Honor to charge that the accusation is subornation of perjury which is a rather more serious business than testifying falsely before the Referee.

The Court: Yes, the indictment covers the charge of subornation of perjury, and it refers to the Act of Congress of July 1st, 1898, Section 29-c, and that section I take it is in the Bankruptcy Law.

Mr. Wolff: I understand also Section 126 of the United States Criminal Code.

The Court: But it is subornation of perjury?

Mr. Wolff: It is tantamount, I believe, to the Epstein case which explains exactly why the two sections are applied in this indictment.

Mr. Elder: If your Honor please I except then.

[fol. 75] The Court: You have no objection then to the subornation charge?

Mr. Wolff: I would rather that you left the charge as set forth in the indictment.

The Court: Motion granted. I charge as requested on motion of the defendant.

Mr. Elder: I request your Honor to charge the jury that while it is important in our system of government to prevent false swearing, as your Honor has said, it is just as important to make sure that no defendant should be convicted upon evidence that is so flimsy as not to prove guilt beyond a reasonable doubt.

The Court: I so charge; but I do not intend to suggest that there is that lack of evidence in this case. It is for the jury to determine whether the evidence is lacking.

Mr. Elder: I ask your Honor to charge the jury that if they decide that the word of Trinz is not sufficient in itself to carry conviction beyond a reasonable doubt, they must acquit in this case.

The Court: I so charge.

Mr. Elder: I request your Honor to charge the jury that in determining whether the word of Trinz is worthy of belief beyond a

reasonable doubt, they have a right to consider that he admitted here on the stand that he had been guilty of false swearing.

The Court: I so charge.

Mr. Elder: That he had endeavored to procure a loan for a friend from the defendant in the sum of \$10,000 and had been disappointed in procuring it.

The Court: I will direct that you take into consideration the testimony with respect to his submission to the defendant of that request.

[fol. 76] Mr. Elder: Following upon his perjury.

The Court: I so direct.

Mr. Elder: Also the manner in which he testified.

The Court: I so charge.

Mr. Elder: And all of the circumstances that would help out in showing whether or not he is such worthy witness or not.

The Court: I so charge.

Mr. Elder: I request your Honor to charge the jury that this crime charged being subornation of perjury, that they cannot find the defendant guilty upon the testimony of Trinz uncorroborated or independent of facts and circumstances which tend to show that the testimony which he gave or says he gave before Referee Thayer was false.

Mr. Wolff: May I answer that, if your Honor pleases?

The Court: Yes.

Mr. Wolff: If your Honor please, there is a rule I understand, your Honor will note that in this court—

Mr. Elder: I think if we are going to have an argument it ought to be—

The Court: An accomplice need not be corroborated.

Mr. Elder: It is not a question of an accomplice. I except to that. I do not want your Honor to be misunderstood in this. This is not a question of an accomplice. It is the old common law rule, that in perjury and subornation of perjury, the testimony of one witness that the alleged subject matter of the perjury was false is not sufficient. The old rule was that there had to be two direct witnesses to the falsity of testimony. That has been modified by modern [fol. 77] decisions, and now they say there has to be one direct witness to the falsity of the testimony and corroborative circumstances which tend to support it.

Now I request your Honor to charge that unless there be such independent corroborative circumstances in this case then the jury must find the defendant not guilty.

The Court: We are agreed, but you (the jury) are not to understand, gentlemen, that the court charges you that there is no such independent corroborating testimony in this case.

Mr. Elder: I take exception to the qualification of your Honor.

The Court: Have you finished your exceptions and requests?

Mr. Elder: I think so.

The Court: Have you, Mr. Wolff?

GOVERNMENT'S REQUESTED INSTRUCTIONS TO JURY

Mr. Wolff: I ask your Honor to charge the jury the law does not require that there be corroboration of the testimony of Trinz. That if they believe what Trinz said to be the truth that is sufficient.

The Court: There you are squarely apart.

Mr. Elder: Yes, sir.

The Court: Very well; the motion of the government is granted; you have a clear exception to that part of it, Mr. Elder.

Mr. Elder: Thank you.

(The jury retired at 5.10 o'clock p. m.)

VERDICT

(The jury returned to the court room at 5.20 o'clock p. m., and rendered a verdict of guilty as against the defendant.)

[fol. 78]

New York, April 5th, 1924.

(The defendant is arraigned for sentence.)

MOTION TO SET ASIDE VERDICT

Mr. Elder: I move to set aside the verdict and for a new trial on the ground that the verdict is against the law and contrary to the evidence and weight of the evidence, and on the ground of the exceptions taken during the trial; on the ground that the indictment does not state facts sufficient to constitute a cause of action; and on the ground that the government failed to make out a prima facie case; on the ground that there was no evidence of the materiality of the alleged false oaths, and on the ground that there was no evidence that the defendants knew that the alleged false oaths were or would be false when sworn to, and on the ground that there are no facts or circumstances in the evidence corroborated by the testimony of Trinz that his said oaths were false when made.

The Court: Motion denied.

Mr. Elder: Exception.

(Whereupon the hearing adjourned to May 5th, 1924, at 10.30 o'clock a. m.)

On the 5th day of May, 1924, it was again adjourned to May 19th, 1924.

On May 19, 1924, defendant was arraigned for sentence. Mr. Wolff moved that the judgment of the court be pronounced. Mr. Elder moved that judgment be arrested upon the ground that the indictment, and particularly the second count thereof, did not state [fol. 79] facts sufficient to constitute the crime which the jury, by its verdict, pronounced defendant to be guilty of, or any other crime

against the laws of the United States, and upon all the other grounds stated heretofore in motion to direct a verdict of acquittal and to set aside the verdict and for a new trial. Motion in arrest of judgment was denied. Mr. Elder excepted. Whereupon the court pronounced judgment that defendant be sentenced to a term of imprisonment in the United States Penitentiary at Atlanta, Georgia, for the term of one year and ten months.

Statement of Exhibits

EXHIBIT 1—FOR IDENTIFICATION ONLY

[fol. 80] EXHIBIT 2—ADJUDICATION IN BANKRUPTCY

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW
YORK

In Bankruptcy. No. 34680

In the Matter of ANNIE HAMMER, Bankrupt

In New York City, in said district, on the 28th day of April, A. D. 1923, before the Honorable Julian W. Mack, Circuit Judge, holding the said court in bankruptcy, the petition of Herman Worton, et al., that Annie Hammer be adjudged a bankrupt, within the true intent and meaning of the Act of Congress relating to bankruptcy having been heard and duly considered and the bankrupt having consented to an adjudication, the said Annie Hammer hereby declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Stephen H. Thayer, one of the referees in Bankruptcy of this Court to take all such further proceedings therein as are required by said Acts of Congress, and of such acts therein as the court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that [fol. 81] the bankrupt shall attend before the said referee on the 3rd day of May, 1923, at ten o'clock A. M. and to further submit to such orders as may be made by said referee or by the Court relating to said bankrupt.

Witness the Honorable Julian W. Mack, Circuit Judge, holding the said court and the seal thereof, at the City of New York, in said District, on the 28th day of April, A. D. 1923.

Alexander Gilchrist, Jr., Clerk.

Endorsements: United States District Court, Southern District of New York. In the Matter of Annie Hammer, Bankrupt. Adjudication of Bankrupt and Order of Reference. Filed April 28, 1923. Lawrence I. Gerber, Attorney for Petitioning Creditors, 291-295 Broadway, New York City.

[fol. 82] EXHIBIT 3—INVOLUNTARY PETITION IN BANKRUPTCY

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In the Matter of ANNIE HAMMER, Bankrupt

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Herman Warton, Louis H. Trinz and Theresa Stochek, respectfully shows:

That Annie Hammer has for the greater part of six months next preceding the date of the filing of this petition, had a principal place of business at No. 253 Park Avenue, Yonkers, New York, in the Borough of —, City of —, County of — and State of New York, — District of New York, and is neither a wage earner, nor a person engaged principally in farming or tillage of the soil, or a municipal, railroad, insurance or banking corporation, and owes debts in the sum of one thousand dollars (\$1,000) or over, and has been engaged in the business of a dressmaker.

That your petitioners are creditors of said alleged bankrupt, having provable claims against said alleged bankrupt amounting in excess to the value of the securities held by them to over five hundred [fol. 83] dollars (\$500) and that the nature and amount of your petitioners' claims and the securities held by them, if any, are as follows:

The claim of your petitioner, Herman Warton, is for a note delivered to the said Alleged bankrupt within the past six months of the agreed price and reasonable value of upwards of four hundred dollars (\$400).

The claim of your petitioner, Louis H. Trinz, is for a promissory note delivered to the said alleged bankrupt within the past six months of the agreed price and reasonable value of five hundred dollars (\$500).

The claim of your petitioner, Theresa Stochek, is for a promissory note delivered to the said alleged bankrupt within the past — months of the agreed price and reasonable value of two hundred and fifty dollars (\$250).

Upon information and belief the said alleged bankrupt insolvent and within the four months last preceding the filing of this petition, and while insolvent as aforesaid, committed an act of bankruptcy in that she did the following acts:

1. That while insolvent as aforesaid, the said alleged bankrupt transferred various moneys amounting in the aggregate to the sum of one thousand dollars (\$1,000) to various of her creditors with intent thereby to prefer such creditors over other creditors of the same class, the names of such preferred creditors being unknown to your petitioners.

2. That the alleged bankrupt with intent to hinder, delay or defraud her creditors, and with intent and for the purpose of giving a [fol. 84] preference, contrary to the provisions of the Bankruptcy Act and upon pretended and alleged antecedent indebtedness claimed or alleged to be due from the said alleged bankrupt, to divers persons, firms and corporations, transferred and set over unto said divers persons, firms and corporations, whose names are unknown to your petitioners, valuable property, consisting of money, merchandise, accounts and dues receivable of the value of \$1,000, applicable to the payment of the debts of said alleged bankrupt.

That there are not more than twelve creditors in number of said alleged bankrupt.

Wherefore, your petitioners pray that service of this petition with a subpoena may be made upon the said alleged bankrupt as provided by the Acts of Congress relating to Bankruptcy, and that she may be adjudged by the Court to be a bankrupt within the purview of said acts.

Dated New York, April 18, 1923.

Herman Warton, Louis H. Trinz, Theresa Stochek, Petitioners.

[fol. 85] STATE OF NEW YORK,

County of New York,

City of New York, ss:

Herman Warton, being duly sworn, deposes and says that she is one of the petitioners herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Herman Warton.

Sworn to before me this 17th day of April, 1923. Leopold Klinger, Comm. of Deeds, N. Y. C.

STATE OF NEW YORK,

County of New York,

City of New York, ss:

Louis H. Trinz, being duly sworn, deposes and says that he is one of the petitioners herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own

knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Louis H. Trinz.

Sworn to before me this 17th day of April, 1923. Leopold
Klinger, Comm. of Deeds, N. Y. C.

[fol. 86] STATE OF NEW YORK,
County of New York,
City of New York, ss:

Theresa Stochek, being duly sworn, deposes and says that she is one of the petitioners herein; that she has read the foregoing petition and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Theresa Stochek.

Sworn to before me this 17th day of April, 1923. Lepold
Klinger, Comm. of Deeds, N. Y. C.

Endorsements on involuntary petition: (77—34,680.) United States District Court, Southern District of New York. In the Matter of Annie Hammer, Bankrupt. Involuntary Petition in Bankruptcy. Lawrence I. Gerber, Counsellor at Law, Attorney for Petitioning Creditors, Office & P. O. Address, 291-295 Broadway, New York City. Filed April 18, 1923.

[fol. 87] EXHIBIT 4—SCHEDULES IN BANKRUPTCY

The following are the schedules:

Schedule A (1)—Statement of creditors to be paid in full or to whom priority is secured by law—None.

Schedule C (2)—Creditors holding securities—None.

Schedule A (3)—Creditors whose claims are unsecured—as follows:

Julius Sobel, 702 Eastern Parkway, Brooklyn, N. Y., for money loaned to petitioner on or about January 10, 1922	1,000
Jules H. Grosswein, 305 W. 98th St., New York City, for money loaned to petitioner on or about October 16, 1922	500
Herman Worton, 1653 Bathgate Ave., Bronx, N. Y., for money loaned to petitioner on or about December 23, 1923	400

Louis H. Trinz, c/o Freyer, 1106 Simpson Street, Bronx, N. Y. for money loaned to petitioner on or about February 14, 1923	500
Dr. David Greenberg, 1220 Grand Concourse, Bronx, N. Y. for money loaned to petitioner, on or about April 16, 1923	250
Lewis Cruger Hasell, W. Kintzing Post and Henry W. Hayden trustees under the Fifth clause of the Last Will and Testament of Mary Mason Jones, Deceased, for damages for breach of contract of lease upon which judgment was recovered in the Supreme Court, New York County, on the 27th day of October, 1922, said [fol. 88] judgment having been docketed in the office of the Clerk of the County of New York on the 27th day of October, 1922, and a transcript having been filed in the office of the Clerk of the County of Westchester on the 16th day of March, 1923, the residence of the foregoing persons being unknown to your petitioner.	8,827.60

Your petitioner is advised, however, that the names of the attorneys for the foregoing persons, and the only known address to the said creditors, is Townsend & Guiterman, Esqrs., 45 Cedar Street, New York City.

Lewis Cruger Hasell, W. Kintzing Post and Henry W. Hayden trustees under the Fifth clause of the last will and testament of Mary Mason Jones, Deceased. Damage is alleged to be due to said creditors by reason of a breach of a certain lease heretofore made by petitioner with Lewis Cruger Hasell, etc., dated about January, 1917, and which said claim is unliquidated.

The address of the foregoing creditors is unknown to your petitioner, except that the name of the attorneys of said creditors is Townsend & Guiterman, Esqrs., 45 Cedar Street, New York City.

Schedule A (4)—Notes or bills discounted which ought to be paid by the drawers, makers, acceptors or endorsers—None.

Schedule A (5)—Accommodation paper—None.

[fol. 89] Schedule B (1)—Real Estate of Bankrupt—None.

Schedule B (2)—Personal property of bankrupt—No property except personal wearing apparel of the value of \$250 approximately, claimed to be exempt.

Schedule B (3)—Choses in action—None.

Schedule B (4)—Property in reversion, remainder or expectancy—Ordinary household furniture used by petitioner of the value of less than \$250.

Schedule B (5)—Property claimed to be exempt under Acts of Congress—None.

Schedule B (6)—Books, papers, deeds, and writings, relating to Bankrupt's business and real estate—None.

[fol. 90] EXHIBIT 5—NOTICE OF APPEARANCE AND CONSENT

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In the Matter of ANNIE HAMMER, Bankrupt

SIRS: Please take notice that the aforementioned alleged bankrupt does hereby appear in this proceeding by her attorney, Jacob Stutsky, and demands that a copy of all papers be served upon him at his office, #220 Broadway, in the Borough of Manhattan, City of New York, and does hereby admit service of a copy of the subpoena and a copy of the Petition in Bankruptcy herein.

Dated April 19, 1923.

Yours, etc., Jacob Stutsky, Attorney for Bankrupt.

Office & P. O. Address: #220 Broadway, Bor. of Manhattan, City of New York.

SIRS: Please take further notice that the alleged bankrupt herein does hereby consent that an order of Adjudication in Bankruptcy be entered herein forthwith.

Dated New York, April 19th, 1923.

Jacob Stutsky, Attorney for Bankrupt.

[fol. 91] STATEMENT RE EXHIBITS 6, 7 and 8

Exhibit 6

So much of Exhibit 1 for identification, i. e., the stenographer's transcript of the testimony of Louis H. Trinz as was read in evidence.

Exhibit 7

So much of Exhibit 1 for identification, i. e., the stenographer's transcript of the testimony of Herman Warton, as was read in evidence.

Exhibit 8

So much of Exhibit 1 for identification, i. e., the stenographer's transcript of the testimony of Annie Hammer, as was read in evidence.

EXHIBIT 9—PROMISSORY NOTE

"\$500.00/xx.

N. Y., Oct. 14, 1922.

Three months after date I promise to pay to the order of Louis H. Trinz, Five Hundred & 00/xx Dollars Payable at 253 Park Avenue, Yonkers, N. Y., Value, received.

No. —. Due Jan. 14, 1923.

Annie Hammer."

[fol. 92]

IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

Thereafter, on the 15 day of September, 1924, within the time allowed, defendant presented the foregoing as his bill of exceptions, which having been examined, is allowed and signed and sealed and ordered on file as part of the record herein on the day and year above written.

Edwin L. Garvin, United States District Judge.

Consented to: William Hayward, U. S. Attorney. Robert H. Elder, Atty. for Defendant.

[fol. 93]

IN UNITED STATES DISTRICT COURT

[Title omitted]

William Hayward, United States Attorney for the Southern District of New York.

Jac. M. Wolff, Assistant United States Attorney.

Robert H. Elder, Attorney for defendant.

OPINION

GARVIN, J.:

This is a motion by the defendant to set aside the verdict rendered by the jury, for a new trial, and in arrest of judgment. Defendant has been convicted of subornation of false swearing in a bankruptcy proceeding. The government charged that he had procured a witness to testify to an untruth at a hearing before a referee in bankruptcy. The defendant claims that this does not constitute perjury, and that there is no such crime as subornation of false swearing in a bankruptcy proceeding, citing *Epstein vs. U. S.*, 196 Fed. 354; *Epstein vs. U. S.*, 271 Fed. 282; *Rosenthal vs. U. S.*, 248 Fed. 684; *Kahn vs. U. S.*, 214 Fed. 54; and *Uhmer vs. U. S.*, 219 Fed. 641.

There has been some discussion as to whether the indictment properly designates the crime therein charged. It is now agreed under authority of *Williams vs. U. S.*, 168 U. S. 382, that an indictment which charges a crime is sufficient, regardless of whether there has been a proper designation of the statute or statutes involved, either endorsed on the margin of the indictment, or referred to therein.

The first cited *Epstein* case, properly holds that false swearing in a bankruptcy proceeding is perjury, but the defendant claims that the case was decided because the court was outraged at the nature of the offense, the defendant being a member of the bar, and that inasmuch as the opinion shows that it was not carefully considered, it should be disregarded.

Perjury, as described in the U. S. Crim. Code, Sec. 125, is as follows:

"Whoever, having taken an oath before a competent tribunal officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more *more* than five years."

Sec. 29B (2) of the Bankruptcy Act reads:

Making "a false oath or account in, or in relation to any proceed-
[fol. 95] ing in bankruptcy."

There could be no perjury under the criminal code, unless the false swearing concerned a material matter. Violation of Sec. 29B (2) of the bankruptcy law does not require that the false swearing should be with reference to a material matter. Furthermore, the section last quoted prohibits making a false account as well as making a false oath. *Epstein vs. U. S.*, 271 Fed. 282, did not consider, or at least did not discuss the point here urged. It was not raised in that case.

It would seem from the Kahn case, *supra*, decided in this circuit, that the court intended to hold that the crime of false swearing in a bankruptcy proceeding is not so serious as that of perjury as defined by Sec. 125 of the Crim. Code. The opinion in that case states:

"It is said, however, that the falsity [of the statements assigned as perjury] was not shown by the clear and convincing proof necessary in perjury cases, which the defendant maintains requires the direct testimony of at least one witness supported by proof of corroborating circumstances. It must be remembered that this prosecution is brought under a special provision of the Bankruptcy Act making it an offense, punishable by imprisonment for a period not exceeding two years, to make a false oath, knowingly and fraudulently in a proceeding in bankruptcy. Of course, broadly stated, this is a perjury statute, but we should not overlook the fact that at the time the present Bankruptcy Act was passed there was on the statute book, and had been for over a hundred years, a general perjury statute [fol. 96] (now Sec. 125 of the Criminal Code, Act March 4, 1909,) which provides that a person found guilty under its provisions 'shall be fined not more than two thousand dollars and imprisoned not more than five years.'

"If Congress regarded the crime of false swearing in bankruptcy proceedings as equal in enormity to the crime of perjury, what necessity was there for Sec. 29B (2) at all? The fact that the word perjury does not appear in the later act and that the term of imprisonment was reduced from five to two years and the \$2,000 fine omitted

altogether, makes it clear that Congress in the Bankruptcy Act was dealing with a crime not in its judgment so aggravated as the crime of perjury."

On the other hand, the court observes:

"Of course, broadly stated, this is a perjury state," but the opinion nowhere mentions, much less overrules the case of *Wechsler v. U. S.* 158 Fed. 579, decided by this circuit. The opinion in the later case, as referring to the two statutes, reads:

"It is manifest that what the bankrupt did, assuming the facts to be as the jury found them, was equally within the provisions of either of these sections. He made a false oath in a proceeding in bankruptcy. Having taken an oath before a competent person in a case in which a law of the United States authorizes an oath to be administered that he would testify truly, he stated material matter [fol. 97] which he did not believe to be true. When a person states matter which he does not believe to be true 'wilfully and contrary to his oath,' he may certainly be said to make a false oath 'knowingly and fraudulently.' We have then an offense covered by two penal sections; the earlier one imposing the heavier sentence. How shall they be construed? The earlier statute is most comprehensive. It covers oral and written false statements when sworn to before any competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered. The later statute covers such statements only when made in, or in relation to, any proceeding in bankruptcy. The principle of construction to be applied, unless there are some special considerations which prevent such application, is too well settled to require the citation of authorities. The later special statute operates to restrict the effect of the general act from which it differs. The two sections may be construed together as providing a stated penalty for the crime of false swearing generally, with the proviso that, when such false swearing occurs in a bankruptcy proceeding, the offender, upon conviction shall be subjected to a different penalty.

"Counsel for the government, however, contends that this rule of construction does not apply, because Section 29 of the bankruptcy act creates a new statutory offense, not covered by Section 5392 of the United States Revised Statutes. The proposition advanced is that:

[fol. 98] "'A false oath made or taken before a commissioner of deeds, a justice of the peace, or a master in chancery would be capable of being used in bankruptcy proceeding. * * * but would alone be insufficient to constitute the crime of perjury.'

"The argument is that the making of such a false oath would not be 'within the commonlaw or statutory definition of perjury.' The making of a false affidavit is not perjury at common law when not made in a judicial proceeding or court of justice. The authorities relied upon by defendant in error are almost entirely concerned with perjury at common law. 2 Whart. Crim. Law, §§ 1244, 1267; Bishop on Crim. Law, §§ 1014, 1026, 1027; Hood v. State, 44 Ala. 81; Pegram v. Styron, 1 Bailey (S. C.) 595. A single authority

only deals with perjury under the statute of the United States. *U. S. v. Bailey*, 9 Pet. 238, 9 L. Ed. 113. In that case Bailey was indicted for perjury and false swearing under Section 3 of the act of March 1, 1823 (3 Stat. 771, c. 37), and Section 13 of the act of March 3, 1825 (4 Stat. 118, c. 65). The first of these sections provided:

“That if any person shall swear or affirm falsely, touching the expenditure of public money, or in support of any claim against the United States, he or she shall, upon conviction thereof, suffer as for wilful and corrupt perjury.”

[fol. 99] The other section provided:

“That if any person in any case, matter, hearing or other proceeding where an oath or affirmation shall be required to be taken or administered, under or by any law of the United States, shall, upon the taking of such oath or affirmation, knowingly and willingly swear or affirm falsely, every person so offending shall be deemed guilty of perjury, and shall, on conviction thereof, be punished’ et.

“Of these acts the court said they did not create or punish the crime of perjury, technically considered, but created a new and substantive offense of false swearing, and punished it in the same manner as perjury * * *. The oath, therefore, need not be administered in a judicial proceeding * * * so as to make the false swearing perjury.’ When this *Bailey* case was under consideration, the federal statutory definition of perjury was substantially that of the common law. It was found in Sec. 18 of the act of April 3, 1790 (1 Stat. 116, c. 9) and read as follows:

“And be it (further) enacted, that if any person shall wilfully and corruptly commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his or her oath or affirmation in any suit, controversy, matter or cause depending in any of the courts of the United States, or in any deposition taken pursuant to the laws of the United States, every person so offending [fol. 100] and being thereof convicted, shall be imprisoned not exceeding three years and fined not exceeding eight hundred dollars; and shall stand in the pillory for one hour, and be thereafter rendered incapable of giving testimony in any of the courts of the United States until such time as the judgment so given against the said offender shall be reversed.”

“It will be seen that Section 5392, Rev. St. U. S., contains the provisions both of the act of 1790 and of the act of 1825, and exactly covers false oaths such as the defendant made. The bankruptcy act, therefore, in this particular did not create a new offense, but merely prescribed a different penalty for one already defined.

“It is suggested that we are not to conclude that Congress could have intended to reduce the punishment of persons who made false oaths in bankruptcy proceedings below that prescribed for others who made such oaths elsewhere, since all false oaths are morally

wrong. The relative adjustment of punishments is, however, one wholly for the regulation of Congress, and this is not the first instance in which that body has introduced similar discriminations into the statutory penal law. The making of a false oath in applying for a pension would be within the provisions of Section 5392, but it is specially provided in Section 4746 [U. S. Comp. St. 1901, p. 3279] that for that offense the punishment shall be imprisonment not more than three years or a fine not to exceed \$500 or both. So, too, the [fol. 101] making of a false affidavit on making an entry of imported merchandise would be perjury under Section 5392, but by Section 9 of the customs administrative act of 1890 (Act June 10, 1890, c. 407, 26 Stat. 135 [U. S. Comp. St. 1901, p. 1895]), the maximum penalty for such offense is two years' imprisonment, or a fine of \$5,000 or both. In like manner Section 5395, Rev. St. U. S. [U. S. Comp. St. 1901, p. 3654], provides that where an oath or affidavit is made or taken under or by virtue of any law in relation to the naturalization of aliens, or in any proceeding under such laws, any person taking such oath or affidavit who knowingly swears falsely shall be punished by imprisonment of not more than five years or less than one year, and by a fine of not more than \$1,000."

In *Rosenthal v. U. S.*, *supra*, the court held one charged with false swearing in a bankruptcy proceeding cannot be prosecuted under Section 125 of the Crim. Code. To the same effect is *Ulmer vs. U. S.* *supra*. They do not seem to be inconsistent with the government's contention.

It does not seem to the court that the points as to insufficiency of the evidence to justify the conviction, raised by the defendant, require discussion. The jury has passed upon the facts.

Taking these decisions together, I am of the opinion that a crime was charged by the indictment. If this conclusion is correct, the motions must be denied.

Edwin L. Garvin.

[fol. 102] IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR

To the Honorable Judges of the United States District Court for the Southern District of New York:

The petition of Charles Hammer respectfully shows:

1. An indictment bearing number 36544 was found against me by the United States Grand Jury for the Southern District of New York, on the 1st day of February, 1924. Such indictment was brought on for trial in the United States District Court for the Southern District of New York, Honorable Edwin L. Garvin, presiding, at the March, 1924 term of such court. The jury brought in a verdict of conviction. Judgment on such verdict was pronounced against me on the 19th day of May, 1924.

2. During the course of the trial, and upon motion for a new trial after the verdict, I made motions and requested rulings which were denied, and to all of which I duly excepted, by reason whereof, the record of the cause contains errors requiring the judgment of the court to be reversed, as I contend and verily believe.

I pray, therefore, that a writ of error may be issued out of the United States Circuit Court of Appeals for the Second Circuit, directed to the United States District Court for the Southern District of [fol. 103] New York, to the end that said errors may be corrected according to law, and for a supersedeas, and for such other and further relief as may be just.

Charles Hammer, Petitioner. Robert H. Elder, Attorney for Petitioner, Seven Day Street, Borough of Manhattan, City of New York.

Read on application for a writ of error this 19th day of May, 1924.
Edwin L. Garvin, District Judge.

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

Charles Hammer, plaintiff-in-error, makes and files this, his assignments of error:

1. The United States District Court for the Southern District of New York erred in permitting the witness Stephen H. Thayer to testify, over objection and exception, that he was a referee in bankruptcy for the Southern District of New York, and was such in the month of April, 1923.

2. The United States District Court for the Southern District of New York erred in permitting said witness to testify, over objection and exception, that when Annie Hammer was called as a witness in a bankruptcy proceeding on July 2, 1923, he administered to her an oath.

3. The United States District Court for the Southern District of New York, erred in permitting said witness to testify, over objection and exception, that when Louis H. Trinz appeared as a witness in such bankruptcy matter, he administered an oath to said Trinz.

[fol. 105] 4. The United States District Court for the Southern District of New York erred in permitting said witness to testify, over objection and exception, that on October 25, 1923, Herman Warton appeared as a witness in such proceeding, and that he, said Thayer, administered an oath to him.

5. The United States District Court for the Southern District of New York erred in receiving in evidence, over objection and ex-

ception, the following testimony of Herman Warton in such bankruptcy proceeding:

"Q. You did not have any other money?

A. Possibly another debt would be paid to me and that is how it accumulated and I could not save \$200 out of my salary.

"Q. Do you know where you got the last \$200?

A. I don't remember how it came to me."

6. The United States District Court for the Southern District of New York erred in receiving in evidence, over objection and exception, the following testimony of Herman Warton in such bankruptcy proceeding:

"Q. How did you happen to go—how did you happen to put this lady in bankruptcy?

A. I asked her for the money and she gave me a note and when the note came due I asked her again, and she said she didn't have it to give to me."

7. The United States District Court for the Southern District of [fol. 106] New York erred in receiving on the examination of the witness Trinz, over objection and exception, the following testimony:

"Q. As far as you recall, was that testimony read as your testimony this afternoon by the stenographer while you were in the courtroom, the testimony that you gave before Referee Thayer on October 25th, 1923?

A. I recollect it as such."

8. The United States District Court for the Southern District of New York erred in receiving on the examination of the witness Trinz, over objection and exception, the following testimony:

"Q. Before you began to give your testimony did the Referee administer to you an oath in substance as follows: 'Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?'

"A. I did."

9. The United States District Court for the Southern District of New York erred in receiving in evidence, over objection and exception, the paper writing marked "Government's Exhibit 9," same being in the form of a promissory note executed by Annie Hammer in favor of Louis H. Trinz.

10. The United States District Court for the Southern District of New York erred in receiving in evidence, and in declining to strike out, on the ground of irrelevancy, over objection and exception, this testimony of the witness Louis H. Trinz:

[fol. 107] "Mr. Hammer requested that I sign this petition in bankruptcy for him."

11. The United States District Court for the Southern District of New York erred in permitting the witness Louis H. Trinz to testify, over objection and exception, that there was a discussion in regard to the testimony to be given by him before the Referee at Stutsky's office on the 16th day of October, 1923, or thereabouts.

12. The United States District Court for the Southern District of New York erred in denying, over exception, defendant's motion made at the close of the Government's case to direct a verdict of not guilty, on the ground that the Government had failed to make out a *prima facie* case.

13. The United States District Court for the Southern District of New York erred in denying, over exception, defendant's motion made at the close of the whole case, to direct a verdict of not guilty upon the ground that the Government had failed to make out a *prima facie* case.

14. The United States District Court for the Southern District of New York erred in denying, over exception, defendant's motion to dismiss the indictment on the ground that same does not state any crime of perjury or subornation of perjury, and because the alleged false swearing was in a bankruptcy proceeding, and could not be prosecuted under the perjury statute.

15. The United States District Court for the Southern District of [fol. 108] New York erred in denying defendant's motion to direct a verdict on the ground that no case had been made out as to false swearing, and no case as to subornation of perjury.

16. The United States District Court for the Southern District of New York erred, upon the summation of the Assistant United States Attorney in commenting and ruling, and permitting said Assistant United States Attorney to comment as follows:

"Mr. Elder: I object to this, if the Court please.

The Court: On what ground?

Mr. Elder: Prejudice. It is not incumbent upon the defendant to call a witness.

He is not to be subjected to criticism for not having done it.

Mr. Wolff: I am not stating anything about the defendant's lack of taking the stand.

The Court: Now the Court will rule that the defendant is not required to take the stand, and no inference negative to him in the slightest degree may be taken by the jury as a result of such failure. The Government is required to prove its case beyond a reasonable doubt that he is the party who committed the crime. The jury is entitled to draw any unfavorable inference against either party to a prosecution which they think is warranted by reason of a failure of a party to present to the jury the testimony of the defendant, whose testimony would elucidate the matters in issue between the parties.

[fol. 109] Mr. Wolff: I haven't endeavored to criticise, I have not mentioned anything about the defendant not taking the stand.

The Court: Yes, the Court did not so understand.

Mr. Elder: May we have all of this part taken down? Because I object to it, your Honor. I object to it because there is no obligation on the part of the defendant to call any primary or any other witness in the whole world, and he is not to be criticised because he did not.

The Court: Do you agree with Mr. Elder upon that proposition?

Mr. Wolff: I certainly do not, sir.

The Court: The objection is overruled, and the absence of any primary witness on the stand may be commented on by the attorney for the United States Government.

Mr. Elder: I except.

Mr. Wolff (Addressing the jury): It is quite obvious, gentlemen, that Annie Hammer could enlighten you as to whether or not she received the money from Trinz. Who in the world would know better? She received the money from Trinz. Who would know better than she whether she signed that note and whether she gave it to him? That note dated back months before the petition in bankruptcy was signed and filed. Who signed and filed, to foist that note upon the referee in bankruptcy and the creditors in that bankruptcy proceeding. That note that Trinz did not see until after the petition in bankruptcy was signed and filed. Why did [fol. 110] they give him this note? This accurate mind of Hammer's sought to evolve something to explain the situation which had been created."

17. The United States District Court for the Southern District of New York erred, upon the summation of the Assistant United States Attorney in commenting and ruling, and permitting said Assistant United States Attorney to comment as follows:

"In the first place, the witness Stutsky was seated in the courtroom and heard the testimony given by Trinz; testimony very damaging to the defendant: Why didn't he take the witness stand?

Mr. Elder: I object to this, your Honor, and I ask that the jury be charged to disregard it. There is no evidence in this case that Stutsky is seated in the courtroom, and even if he were——

The Court: Objection sustained. Disregard it, gentlemen.

Mr. Wolff: The minutes show, the stenographer's minutes show that Mr. Stutsky is counsel for the defendant. I saw it on the stenographer's minutes.

Mr. Elder: Do you write shorthand?

Mr. Wolff: Yes, I do. Gentlemen, regardless of whether or not Stutsky is in this courtroom, it has been shown that there was no effort by the defendant to procure the attendance of Stutsky to contradict what Trinz said on the witness stand. That is obvious to you."

[fol. 111] 18. The United States District Court for the Southern District of New York erred in charging the jury, over exception, in the manner following:

"Mr. Elder: I request your Honor to charge the jury that this crime charged being subornation of perjury, that they cannot find the defendant guilty upon the testimony of Trinz uncorroborated or independent of facts and circumstances which tend to show that the testimony which he gave or says he gave before Referee Thayer was false.

Mr. Wolff: May I answer, if your Honor pleases?

The Court: Yes.

Mr. Wolff: If your Honor please, there is a rule I understand, your Honor will note, that in this court——

Mr. Elder: I thing if we are going to have an argument it ought to be——

The Court: An accomplice need not be corroborated.

Mr. Elder: It is not a question of an accomplice. I except to that. I do not want your Honor to be misunderstood in this. This is not a question of an accomplice. It is the old common law rule, that in perjury and subornation of perjury, the testimony of one witness that the alleged subject matter of the perjury was false is not sufficient. The old rule was that there had to be two direct witnesses to the falsity of testimony. That has been modified by modern decisions, and now they say there has to be one direct witness to the falsity of the testimony and corroborative circumstances which [fol. 112] tend to support it.

Now I request your Honor to charge that unless there be such independent corroborative circumstances in this case, then the jury must find the defendant not guilty.

The Court: We are agreed, but you (the jury) are not to understand, gentlemen, that the court charges you that there is no such independent corroborating testimony in this case.

Mr. Elder: I take exception to the qualifications of your Honor.

The Court: Have you finished your exceptions and requests?

Mr. Elder: I think so.

The Court: Have you, Mr. Wolff?

Mr. Wolff: I ask your Honor to charge the jury the law does not require that there be corroboration of the testimony of Trinz. That if they believe what Trinz said to be the truth that is sufficient.

The Court: There you are squarely apart.

Mr. Elder: Yes, sir.

The Court. Very well; the motion of the government is granted; you have a clear exception to that part of it, Mr. Elder.

Mr. Elder: Thank you."

19. The United States District Court for the Southern District of New York erred in omitting to charge the jury that the testimony of the witness Trinz should be scrutinized carefully, and that care and caution should be exercised in viewing such testimony.

[fol. 113] 20. The United States District Court for the Southern District of New York erred in omitting to charge the jury that they should not convict upon the uncorroborated testimony of the witness Trinz, unless they found his story, as told, to be straightforward, and to have a ring of truth, and to indicate unequivocally the guilt of defendant.

21. The United States District Court for the Southern District of New York erred in denying defendant's motion to set aside the verdict and for a new trial.

22. The United States District Court for the Southern District of New York erred in denying, over exception, defendant's motion that judgment be arrested on the ground that the indictment does not state facts constituting a crime.

Dated May 19, 1924.

Robert H. Elder, Attorney for Plaintiff-in-Error, Seven Dey Street, Borough of Manhattan, City of New York.

Read on application for writ of error this 19th day of May, 1924.
Edwin L. Garvin, District Judge.

[fol. 114] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT AND FIXING BAIL

Judgment of conviction having been rendered herein against the defendant above named on this 19th day of May, 1924, and defendant having applied for a writ of error to the United States Circuit Court of Appeals for the Second Circuit, and to be admitted to bail pending the determination thereof, and for a stay,

Now, upon motion of Mr. Robert H. Elder, attorney for defendant, it is

Ordered that a writ of error be issued as prayed for; and it is further

Ordered that defendant be admitted to bail pending such review in the sum of \$5,000.00, and the writ of error together with such [fol. 115] bail shall act as a supersedeas, and that execution of such judgment be stayed; and it is further

Ordered that at any time within ninety days defendant may amend the assignments of error this day filed on his application for a writ of error, by assigning other or additional errors, or by assigning the same errors in other or different language.

Edwin L. Garvin, District Judge.

IN UNITED STATES DISTRICT COURT

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between the United States of America, plaintiffs, and Charles Hammer, defendant, a manifest error hath happened, to the great damage of the said Charles Hammer, as is said and appears by his complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States [fol. 116] Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 18th day of June, 1924, that the record and proceedings aforesaid being inspected, the said Judges for the United States Circuit Court of Appeals of the Second Circuit may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 19th day of May, in the year of our Lord, one thousand, nine hundred and twenty-four, and of the Independence of the United States, the one hundredth and forty-eighth.

Alex. Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit. (Seal.)

The foregoing writ is hereby allowed the 19th day of May, 1924.

Edwin L. Garvin, United States District Judge.

[fol. 117] CITATION—In usual form; omitted in printing

[fol. 118] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING RETURN DAY OF CITATIONS AND WRIT OF ERROR

Upon reading and filing the annexed affidavit of Otho S. Bowling, it is

Ordered that the time within which the writ of error and citation allowed herein the 19th day of May, 1924, may be returned, be extended to the 18th day of August, 1924.

Dated June 18, 1924.

Edwin L. Garvin, United States District Judge.

Consented to: William Hayward, United States Attorney for the Southern District of New York.

[fol. 119] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF OTHO S. BOWLING

STATE OF NEW YORK,
County of New York, ss:

Otho S. Bowling, being duly sworn, says:

I am of counsel for defendant. Judgment of conviction against him was pronounced herein on the 19th day of May, 1924, Honorable Edwin L. Garvin, presiding. Thereupon Judge Garvin allowed a writ of error to the United States Circuit Court of Appeals, Second Circuit, and signed a citation, both returnable on the 18th day of June, 1924. The bill of exceptions is being prepared, and will be ready long before the time when, under the rule, such bill of exceptions may be filed; namely, August 18, 1924. It will be impossible to return the citation and writ of error on June 18, 1924.

I pray, therefore, that the time within which such citation and writ of error may be returned, be extended to run concurrently with the time within which the bill of exceptions may be filed.

No previous application has been made.

Otho S. Bowling.

Sworn to before me this 17th day of June, 1924. G. M. McDonnell, Notary Public, New York County.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO FILE

Upon reading and filing the notice of motion, dated August 4th, 1924; the affidavit of Otho S. Bowling, verified the 4th day of August, 1924; and the waiver of notice of the United States District Attorney endorsed thereon;

Now, upon motion of Mr. Robert H. Elder, attorney for defendant, it is

Ordered that the term of court at which judgment was pronounced against the above named defendant herein, be and hereby is extended to the 16th day of September, 1924, for all purposes of this action, and that the return day of the writ of error to review such judgment of conviction, and the citation issued thereupon, be and hereby is likewise extended to the 16th day of September, 1924.

Geo. W. McClintic, District Judge.

[fol. 120a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Upon reading and filing the annexed affidavit of Otho S. Bowling, verified the 15th day of September, 1924;

Now, upon motion of Mr. Robert H. Elder, attorney for defendant, it is

Ordered that the term of court at which judgment was pronounced against the above named defendant, be and hereby is extended to the 7th day of October, 1924, for all purposes of this action; and that the return day of the writ of error on review of such judgment of conviction, and the citation issued thereupon, be and hereby are likewise extended to the 7th day of October, 1924.

William I. Grubb, District Judge.

Consented to. Wm. Hayward, United States Attorney for the Southern District of New York.

[fol. 121] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of record in the District Court in this action, as agreed upon by the parties.

Dated New York, September 15, 1924.

Robert H. Elder, Attorney for Plaintiff-in-Error. William Hayward, Attorney for Defendant-in-Error.

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled action as agreed on by the parties.

In witness whereof, I have caused the seal of said Court to be hereto affixed at the City of New York, in the United States District Court of New York, this 2 day of October, 1924.

Alexander Gilchrist, Jr., Clerk.

[fol. 122] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CHARLES HAMMER, Plaintiff-in-Error,

against

UNITED STATES OF AMERICA, Defendant-in-Error

Before Rogers, Hough, and Manton, Circuit Judges

Robert H. Elder, for Plaintiff-in-Error.

Otho S. Bowling, of Counsel.

William Hayward, United States Attorney, for Defendant-in-Error.

Jac M. Wolff, Assistant United States Attorney, of Counsel.

OPINION

This case comes here on writ of error to the United States District Court for the Southern District of New York.

The facts appear in the opinion.

ROGERS, Circuit Judge: The plaintiff-in-error, hereinafter called the defendant, was indicted, tried, and convicted upon an indictment which charged him with the commission of a crime. The indictment contained three counts. At the conclusion of the trial the defendant's counsel moved the court to direct the jury to find a verdict of not guilty on the first count upon the ground that there was no evidence to sustain it. The motion was granted, with the admission of the counsel for the United States that there was no evidence to show guilt under that count. Thereupon a similar motion was made as to the third count, and with a like concurrence by

the counsel for the United States that motion was likewise granted. The first count charged that the defendant had suborned his wife, Annie Hammer, falsely to testify before a referee in bankruptcy that she had borrowed money from one Herman Warton and one Louis H. Trinz. The third count was similar but named the person suborned as Herman Warton.

We therefore are now concerned with the second count only which was the count upon which the defendant was convicted. That count charged that the defendant had suborned Louis H. Trinz falsely to testify in the proceeding before the referee in bankruptcy that he had prior to April 18, 1923, loaned to Annie Hammer the sum of \$500, and that she had prior to that date signed and delivered to him her promissory note for that amount, which note was dated Oct 14, 1922, whereas in truth and in fact the said Trinz and the defendant well knew that the facts testified to by Trinz were untrue and that they at no time believed them to be true.

At the end of the charge to the jury the defendant's counsel preferred some 8 requests to charge and the Court directed the jury as requested.

The last request he made was the following:

"I request your Honor to charge the jury that this crime charged being subornation of perjury, that they cannot find the defendant guilty upon the testimony of Trinz uncorroborated or independent of facts and circumstances which tend to show that the testimony which he gave or says he gave before Referee Thayer was false."

[fol. 124] Thereupon, after some colloquy, the following occurred:

"The Court: An accomplice need not be corroborated.

Mr. Elder: It is not a question of an accomplice. I except to that. I do not want your Honor to be misunderstood in this. This is not a question of an accomplice. It is the old common law rule, that in perjury and subornation of perjury, the testimony of one witness that the alleged subject matter of the perjury was false is not sufficient. The old rule was that there had to be two direct witnesses to the falsity of testimony. That has been modified by modern decisions, and now they say there has to be one direct witness to the falsity of the testimony and corroborative circumstances which tend to support it.

Now I request your Honor to charge that unless there be such independent corroborative circumstances in this case then the jury must find the defendant not guilty.

The Court: We are agreed, but you (the jury) are not to understand, gentlemen, that the court charges you that there is no such independent corroborating testimony in this case.

Mr. Elder: I take exception to the qualification of your Honor."

Then the Court asked the counsel for the United States whether he had any requests and the following occurred:

"Mr. Wolff: I ask your Honor to charge the jury the law does not require that there be corroboration of the testimony of Trinz. That if they believe what Trinz said to be the truth that is sufficient.

The Court: There you are squarely apart.

Mr. Elder: Yes, sir.

The Court: Very well; the motion of the government is granted; you have a clear exception to that part of it, Mr. Elder.

Mr. Elder: Thank you."

It thus appears that the court at the request of defendant's counsel charged that the jury could not find defendant guilty of subornation of perjury upon the testimony of Trinz uncorroborated, and then upon the request of the counsel for the United States as flatly instructed them that the law does not require that there be corroboration of the testimony of Trinz. This of course contradicted what he [fol. 125] had just charged on the subject and amounted to a withdrawal of his previous instruction. The question is whether the court fell into error in charging that the jury could convict the defendant of subornation of perjury on the uncorroborated testimony of Trinz.

Lord Coke defined perjury by saying that it "is a crime committed when a lawful oath is administered, by any that hath authority, to any person in any judicial proceeding, who sweareth absolutely and falsely in a matter material to the issue or cause in question, by their own act, or by the subornation of others." 3 Inst. 164. Blackstone followed it in substance. 4 Bl. Com. 137. Perjury does not include all false declarations made under oath. See Bishop's Criminal Law (9th Ed.) vol. 2, sec. 1014 and sec. 1197 a 1.

But for the courts of the United States the crime of perjury is defined in the Criminal Code, Section 125. It declares as follows:

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury and shall be fined not more than two thousand dollars and imprisoned not more than five years."

And the crime of subornation of perjury is defined in Section 126 of the same Code as follows:

"Whoever shall procure another to commit any perjury is guilty [fol. 126] of subornation of perjury, and punishable as in the preceding section prescribed."

The latter section has been held to embrace subornation of every sort of perjury. *Epstein v. United States* 196 Fed. 354. In that case decided by the Circuit Court of Appeals in the Seventh Circuit, it was held that false swearing in bankruptcy proceedings constituted "perjury" within Sections 5392 and 5393 above set forth. And the

court further held that Section 29¹ of the Bankruptcy Act of 1898 merely changed the punishment for perjury committed in bankruptcy proceedings, and that therefore suborning a witness at a hearing in bankruptcy to commit perjury constituted an offence within sections 5392 and 5393. We fully concur in the conclusion reached in that case and for the reasons there stated. False swearing in bankruptcy proceedings is perjury within the meaning of Section 5392. And Section 5393 embraces subornation of every sort of perjury.

In this connection we call attention to what was held by the Circuit Court of Appeals in the Sixth Circuit in *Daniels v. United States* 196 Fed. 459. It was there held that the provision in the Bankruptcy Act of July 1, 1898, Sec. 7a (9) c. 541 (30 Stat. 548) providing that no testimony given by a bankrupt on his examination "shall be offered in evidence against him in any criminal proceeding" has reference only to crimes committed previous to the giving of such testimony and not to any criminal proceeding based on a crime inherent in the bankrupt's examination, and in a prosecution [fol. 127] for perjury committed during the examination the alleged false testimony may be given in evidence.

This Court in the earlier case of *Wechsler v. United States* 158 Fed. 579, passing on the provision in Section 7a (9) of the Bankruptcy Act of 1898, that no testimony given by the bankrupt shall be offered in evidence against him in any criminal proceeding, held that it did not give immunity from prosecution for giving false testimony upon any such examination. It then went on to hold that the provision made in Section 29b (2) providing for the punishment of any one who wilfully and fraudulently made a false oath in, or in relation to, any proceeding in bankruptcy does not create a new offense, but merely prescribes a different penalty for the crime of perjury when committed in a bankruptcy proceeding. That case received very careful consideration in an opinion written by Judge Lacombe and concurred in by Judges Coxe and Ward.

Some unguarded expressions used in the opinion of this Court in *Kahn v. United States* 214 Fed. 54, it is said over-ruled the *Wechsler* case. The same Judges decided both cases. Judge Coxe wrote for the Court in the *Kahn* case and the other two Judges concurred. The opinion contains no reference to the *Wechsler* case, and it is not at all probable that the Court would deliberately over-rule that carefully considered decision and make no allusion whatever to it. We are satisfied that there was not the slightest intention on the part of any of the Judges to over-rule the earlier case. It is still the law [fol. 128] of this Circuit and we adhere to it and believe it to have been properly decided.

The civil law of evidence in Continental Europe differed from the common law in material respects. It was a general rule of the civil law that one witness alone was insufficient upon any material point.

¹ It provides that a person shall be punished by imprisonment not to exceed two years who makes a false oath or account in, or in relation to any proceeding in bankruptcy, and the indictment or information must be within one year after the commission of the offense.

But the common law courts rejected this general rule of the civil law and denied that the probative value of testimony was to be measured by some uniform numerical standard. They adopted instead the principle that the efficacy of testimony depended upon the character and trustworthiness of the witness. And the general rule of the common law is well established that if the jury believes the statement of a single witness they may found their verdict upon it even though the witness stands alone and his testimony is contradicted by others not believed by them. Wigmore on Evidence (1st Ed.) vol. 3, p. 2711, sec. 2034. It is a maxim of the law *testes ponderantur non numerantur*.

But there are some exceptions to the rule that the testimony of a single witness may suffice to establish any controverted fact. The Constitution of the United States, in Art. III, sec. 3, provides that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

And at common law one cannot be convicted of perjury by the testimony of a single witness unless there are corroborating circumstances. Wigmore in his work on Evidence (1st ed.) vol. 3, p. 2721, sec. 2040, in laying down this rule states that it is "the single common law exception to the doctrine that one witness alone may suffice in every case." He adds that "it is fairly clear that there was no such rule of common law until towards the first half of the 1700s." While the rule at one time was that a conviction for perjury could not be had except upon the direct testimony of two witnesses, this has been for a long time relaxed, and it is now well established that a charge of perjury may be sustained either by the testimony of two witnesses or by that of one witness and corroborating circumstances. *United States v. Coons* 25 Fed. Cas. No. 14,860; *United States v. Jones*, Fed. Cas. No. 15,491; *United States v. Baer*, 6 Fed. 42; *United States v. Mallard*, 40 Fed. 151; *United States v. Hall*, 44 Fed. 864; *Holy v. United States* 278 Fed. 521; *O'Leary v. United States* 158 Fed. 796; *Hashagen v. United States*, 169 Fed. 396; *Lever v. United States* 183 Fed. 102; *Allen v. United States* 194 Fed. 664; *Greene v. People* 182 Ill. 278; *Peterson v. State* 74 Ala. 34; *State v. Jean* 42 La. Ann. 946; *Brown v. State*, 57 Miss. 424; *People v. Doody* 172 N. Y. 165.

The rule that in cases of perjury the crime is so heinous as compared with other crimes that in order to convict it is necessary that there should be at least one witness and that he must be corroborated by circumstantial evidence, is repudiated by some of the authorities as out of harmony with our system of jurisprudence. In *State v. Storey*, 148 Minn. 398, the court held that perjury may be proved by circumstantial evidence alone. And see *In re Metcalf*, 8 Okl. Crim. 605; *People v. Doody* 172 N. Y. 165.

[fol. 130] That the rule applied to perjury is not to be applied to subornation of perjury seems to us to be clear upon reason and authority. It is true that in *People v. Evans* 40 N. Y. 1 it was held that subornation of perjury may not be proven by the uncorroborated testimony of the person suborned.

In Wigmore on Evidence (2nd ed.) vol. 4, sec. 2042, p. 323, the rule is stated that in case of one charged with perjury a single witness suffices if corroborated. He then goes on to say that "The rule should not apply necessarily to a charge of subornation of perjury, because the act of subornation does not involve the theory of oath against oath, and the perjury may be evidenced by the perjured witness himself, whose present testimony is thus not opposed to the testimony for the prosecution."

In Bishop's Criminal Law (9th ed.) vol. 2, sec. 1198, it is laid down that "Since a suborner of perjury is not charged with giving false testimony; since he does not commit his crime while testifying, his conviction requires no greater proof than does that of a thief." And in 30 Cyc. 1454 the rule is stated as follows:

"That rule that under an indictment for perjury defendant cannot be convicted on the uncorroborated testimony of a single witness is not applicable to a case of subornation of perjury."

In *United States v. Thompson* 31 Fed. 331 (1887) Judge Deady held that the person solicited to commit perjury is not an accomplice in the crime of subornation committed by the person who suborned [fol. 131] him, and that the fact that he committed the perjury did not prevent the jury from convicting the suborner of the solicitation on his testimony. Judge Deady held that the defendant could be found guilty of subornation of perjury on the uncorroborated testimony of the person solicited to commit the perjury—the question of his credibility being for the jury.

In *Boren v. United States*, 144 Fed. 801 the Circuit Court of Appeals for the Ninth Circuit held that the rule that under an indictment for perjury the defendant cannot be convicted on the uncorroborated testimony of a single witness is not applicable to a case of subornation of perjury. The court in that case said:

"It is urged that there is not sufficient evidence to sustain the verdict, for the reason that the proof of each count consists of the testimony of a single witness. It is true that under indictments for perjury the generally accepted rule is that the accused cannot be convicted on the uncorroborated testimony of a single witness. The reason assigned is that the same effect is to be given to the testimony of the party accused as to that of the accusing witness, and the proof would be merely the oath of one person against that of another. The reason of the rule in the form in which it is expressed does not apply to a case of subornation of perjury such as the present case for the reason that here the testimony does not consist of the oath of one person against that of another. The testimony of each witness for the government involves, it is true, the impeachment of his own former sworn statement, but it is direct evidence against the accused as to his instigation of the perjury. We find that in *People v. Evans*, 40 N. Y. 1, it was held that subornation of perjury may not be proven by the uncorroborated testimony of the person suborned. The contrary was held by Judge Deady in

United States v. Thompson (C. C.) 31 Fed. 331. In *State v. Renswick*, 85 Minn. 19, 88 N. W. 22, it was held that, where it is sought to establish by his own testimony the perjury of the person suborned, his testimony must be corroborated, but that fact that the [fol. 132] accused suborned or induced him to commit the crime may be established by the uncorroborated testimony of the witness if it satisfies the jury beyond a reasonable doubt."

In 1842 the Supreme Court of Massachusetts in *Commonwealth v. Douglass* 46 Mass (5 Met.) 241, had the question before it. It held that subornation of perjury may be proved by the testimony of one witness. Referring to the rule that in cases of perjury guilt must be proved either by two witnesses or by one witness and by other independent evidence, corroborative of his testimony, the Court said:

"It is admitted that such evidence is necessary to substantiate that part of the indictment which alleges that the crime of perjury was committed by the person therein named; and in this respect no objection is made to the instructions of the court to the jury. And as to that part of the indictment, which charges the defendant with subornation of perjury, or procuring the commission of the said crime, we think it very clear that the same rule of evidence does not apply. The reason of the rule in cases of perjury is, that the same effect is to be given to the testimony of the party accused, as to that of the accusing witness, so that if there be no other proof, the scale of evidence is poised; there being witness against witness, oath against oath. No such reason exists as to the proof of that part of the indictment which charges the defendant with the procuring of the commission of the perjury; and this part of the charge, as we think, may undoubtedly be proved by the testimony of one witness. This exception therefore is not founded on any good reason, nor do we find it sustained by any authority."

The Supreme Court of Missouri in *State v. Richardson*, 248 Mo. 563, 570 considered this question at length reviewing the authorities and in an opinion concurred in by all the judges came to the conclusion that the common law rule that in perjury cases the defendant [fol. 133] cannot be convicted on the uncorroborated testimony of a single witness, but that that rule is without application to one charged with subornation of perjury. In the course of its opinion the Court, after stating the reasons for the rule applied to one charged with perjury, said:

"By what course of logic can these reasons be made to apply to the case of a suborner? Why should the rules as to him be different from that applied in cases of larceny, rape, or other criminal offenses? The presumption of his innocence certainly is of no greater weight than in the case of one accused of larceny or rape. There is no public policy reason why his conviction should be made more difficult than in the majority of other felonies. He is not convicted of an offence

occurring while he is under oath and testifying. The offence that he commits is virtually consummated before the witness gives his testimony. He is not charged with the giving of false testimony. He does not commit his crime while performing any necessary function in the progress of a trial. Why then should his conviction require greater proof than in convicting for theft. We do not think it does. All of the authorities hold that a single witness, uncorroborated, can make sufficient proof of the suborning."

We have no doubt that one who in a bankruptcy proceeding swears wilfully and falsely to matter which he does not believe to be true commits perjury. And the record discloses that Trinz, when examined in this case, admitted that he testified falsely before the referee in bankruptcy. The following is an excerpt from his testimony in this case—his attention having first been called to the testimony he gave in the bankruptcy proceeding:

"Q. As far as you recall, was that testimony read as your testimony this afternoon by the stenographer while you were in the courtroom, the testimony that you gave before Referee Thayer on October 25th, 1923?

A. I recollect it as such.

[fol. 134] Q. You recollect the question, 'You did loan her some money?' And your answer, 'Yes, sir.' Do you recall that question?

A. I do.

Q. And you recall that answer?

A. I do.

Q. Did you ever loan Annie Hammer any money?

A. No, sir.

Q. I speak not alone at this time, but at any time in your life, did you ever loan her money?

A. No, sir.

Q. Did Annie Hammer ever give you a promissory note in consideration of a loan you made to her?

A. No, sir."

Then he proceeded to testify to the fact that he was induced to testify as he did by Charles Hammer, the defendant herein. If the jury believed his story beyond a reasonable doubt they were justified in finding Hammer guilty as charged in the indictment.

Judgment Affirmed.

[fol. 135] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Error to the District Court of the United States for the Southern District of New York

JUDGMENT—March 9, 1925

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

H. W. R. M. T. M.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

[fol. 136] [File endorsement omitted.]

[fol. 137] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 136 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Charles Hammer, Plaintiff in Error, against United States, Defendant in Error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 10th day of March in the year of our Lord One Thousand Nine Hundred and twenty-five and of the Independence of the said United States the One Hundred and forty-ninth.

Wm. Parkin, Clerk. (Seal of United States Circuit Court of Appeals.)

[fol. 138] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 13, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.